

**CLOSED, APPEAL, APPEAL\_NAT**

**U.S. Bankruptcy Court  
Southern District of Texas (Houston)  
Adversary Proceeding #: 24-03066**

*Assigned to:* Bankruptcy Judge Alfredo R Perez

*Lead BK Case:* [99-99999](#)

*Lead BK Title:* Out of District Main Case

*Lead BK Chapter:* 7

*Demand:*

*Date Filed:* 04/11/24

*Date Terminated:* 06/13/24

*Date Removed From State:*  
04/11/24

*Nature[s] of Suit:* 01 Determination of removed claim or cause

***Joint Debtor***

**James Michael Andersen**

17041 El camiino Real

Suite 204

Houston, TX 77058

281-488-2800

SSN / ITIN: xxx-xx-8554

represented by **James Michael Andersen**

Attorney at Law

17041 El Camino Real

Ste 204

Houston, TX 77058

281-488-2800

Email: [jandersen.law@gmail.com](mailto:jandersen.law@gmail.com)

***Plaintiff***

**Elizabeth Thomas**

represented by **James Michael Andersen**

(See above for address)

V.

***Defendant***

**Primary Residential Mortgage Inc**

represented by **Gwen E. Richard**

Irelan McDaniel PLLC

2520 Caroline St, 2nd Floor

Houston, TX 77004

713-222-7666

Fax : 713-222-7669

Email: [grichard@imtexaslaw.com](mailto:grichard@imtexaslaw.com)

***Defendant***

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**Stewart Title Company**

***Defendant***

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**MTH Lending Group, LP**

represented by **Dale M Holiday**

Germer PLLC

2929 Allen Parkway, Suite 2900

Houston, TX 77019

713-650-1313

Email: [rholiday@germer.com](mailto:rholiday@germer.com)

***Defendant***

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**Meritage Homes of Texas LLC**

***Defendant***

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**Mary L Lester**

***Defendant***











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**Meritage Homes Corporation**












***Defendant***












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**Stewart Title Guaranty Company**

***Counter-Defendant***












## Miramar Lake Homeowners Association Inc














Filing Date	#	Docket Text
04/11/2024	 <a href="#">1</a> (5 pgs)	Adversary case 24-03066. Nature of Suit: (01 (Determination of removed claim or cause)) Notice of Removal Elizabeth Thomas , Miramar Lake Homeowners Association Inc . Receipt Number 0, Fee Amount \$350 (ltg4) (Entered: 04/15/2024)
04/22/2024	 <a href="#">2</a> (2 pgs)	Order for Conference Pre-Trial Conference set for 6/13/2024 at 10:00 AM at Houston, Courtroom 404 (MI). (tjl4) (Entered: 04/22/2024)
04/23/2024	 <a href="#">3</a> (43 pgs; 9 docs)	Motion for Remand. Objections/Request for Hearing Due in 21 days. Filed by Defendant MTH Lending Group, LP Hearing scheduled for 5/20/2024 at 01:00 PM at Houston Courthouse. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G # <a href="#">8</a> Proposed Order) (Holidy, Dale) (Entered: 04/23/2024)
04/23/2024	 <a href="#">4</a> (2 pgs)	Notice of Hearing. (Related document(s): <a href="#">3</a> Motion for Remand) Filed by MTH Lending Group, LP (Holidy, Dale) (Entered: 04/23/2024)
04/23/2024	 <a href="#">5</a> (3 pgs)	Order Requiring Elizabeth Thomas and James M. Andersen to Personally Appear and Show Cause Why They Should Not be Held In Civil Contempt of Court and Sanctioned Until They Cease Their Contemptuous Behavior, Signed on 4/23/2024 <b>Show Cause hearing to be held on 5/1/2024 at 08:00 AM at Houston, Courtroom 404 (MI).</b> (SierraThomasAnderson) (Entered: 04/23/2024)
04/24/2024	 <a href="#">6</a> (2 pgs)	Certificate (Filed By MTH Lending Group, LP ). (Holidy, Dale) (Entered: 04/24/2024)
04/24/2024	 <a href="#">7</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">2</a> Order for Conference) No. of Notices: 0. Notice Date 04/24/2024. (Admin.) (Entered: 04/24/2024)
04/25/2024	 <a href="#">8</a> (12 pgs; 2 docs)	Supplemental Motion for Remand. Objections/Request for Hearing Due in 21 days. Filed by Defendant MTH Lending Group, LP (Attachments: # <a href="#">1</a> Exhibit A) (Holidy, Dale) (Entered: 04/25/2024)
04/25/2024	 <a href="#">9</a> (4 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">5</a> Order Setting Hearing) No. of Notices: 0. Notice Date 04/25/2024. (Admin.) (Entered: 04/25/2024)
04/28/2024	 <a href="#">10</a> (186 pgs; 12 docs)	Response <i>WITHDRAWAL OF NOTICE OF REMOVAL WITH PREJUDICE</i> (related document(s): <a href="#">3</a> Motion for Remand, <a href="#">8</a> Motion for Remand). Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit # <a href="#">3</a> Exhibit # <a href="#">4</a> Exhibit # <a href="#">5</a> Exhibit # <a href="#">6</a> Exhibit # <a href="#">7</a> Exhibit # <a href="#">8</a> Exhibit # <a href="#">9</a> Exhibit # <a href="#">10</a> Exhibit # <a href="#">11</a> Exhibit) (Andersen, James) (Entered: 04/28/2024)













04/29/2024	 <a href="#">11</a> (1 pg)	Remand Order (Related Doc # <a href="#">3</a> ) Signed on 4/29/2024. (SierraThomasAnderson) (Entered: 04/29/2024)
04/30/2024	 <a href="#">13</a> (3 pgs)	Notice <i>Non-Representation of Elizabeth Thomas as to Any Cliams related to P.C.F. PROPERTIES IN TX LLC</i> . Filed by Elizabeth Thomas (Andersen, James) (Entered: 04/30/2024)
05/01/2024	 14	Courtroom Minutes. Time Hearing Held: 7:57 AM - 8:10 AM, 8:18 AM - 8:34 AM. Appearances: Dale Holiday for the Defendant. James Andersen for the Plaintiff. Plaintiff Elizabeth Smith present. Gwen Richard an interested party. Kim Altuler an interested party. The Court heard oral argument. Witnesses sworn in and testimony given: James Andersen and Elizabeth Thomas. As stated on the record, parties to file an agreement regarding dismissal no later than 05/02/24 at 5:00 PM. If parties are unable to reach an agreement, hearing to be held on 05/03/24 at 8:00 AM. As stated on the record, wrongful removal compensation motion to be filed no later than 05/15/24 at 5:00 PM. Responses due no later than 05/28/2024 at 5:00 PM. Hearing to be held on 06/10/24 at 1:30 PM as stated on the record. The Court required the parties to attend the hearing in person. (Related document(s): <a href="#">5</a> Order Setting Hearing) <b>Hearing scheduled for 6/10/2024 at 01:30 PM at Houston, Courtroom 404 (MI).</b> (SierraThomasAnderson) (Entered: 05/01/2024)
05/01/2024	 <a href="#">15</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 5/1/2024 7:57:39 AM ]. File Size [ 6264 KB ]. Run Time [ 00:13:03 ]. (admin). (Entered: 05/01/2024)
05/01/2024	 <a href="#">16</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 5/1/2024 8:18:10 AM ]. File Size [ 7856 KB ]. Run Time [ 00:16:22 ]. (admin). (Entered: 05/01/2024)
05/01/2024	 <a href="#">17</a> (2 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">11</a> Order on Motion For Remand) No. of Notices: 0. Notice Date 05/01/2024. (Admin.) (Entered: 05/01/2024)
05/02/2024	 <a href="#">18</a> (2 pgs)	Notice <i>of Filing</i> . Filed by MTH Lending Group, LP (Holidy, Dale) (Entered: 05/02/2024)
05/08/2024	 <a href="#">19</a> (1 pg)	AO 435 TRANSCRIPT ORDER FORM (14-Day) by Meritage Homes of Texas/Kim Altsuler. This is to order a transcript of Elizabeth Thomas & James Andersen Show Cause Hearing on 5/1/2024 before Judge Marvin P. Isgur. Court Reporter/Transcriber: Access Transcripts (Filed By Meritage Homes of Texas LLC ). (Irving, Stephen) Electronically Forwarded to Access Transcripts, LLC, on 05/08/2024. Estimated Date of Completion: 05/22/2024. Modified on 5/8/2024 (BenjaminRomero). (Entered: 05/08/2024)
05/13/2024	 <a href="#">20</a> (26 pgs; 2 docs)	Transcript RE: Show Cause Hearing held on 5/1/24 before Judge Marvin Isgur. Transcript is available for viewing in the Clerk's Office. Within 21 days, parties are advised to comply with privacy requirements of Fed. R. Bank. P. 9037, ensuring that certain protected information is redacted from transcripts prior to their availability on PACER. Filed by Transcript access will be restricted through 08/12/2024. (AccessTranscripts) (Entered: 05/13/2024)






05/15/2024	 <a href="#">21</a> (197 pgs; 17 docs)	Joint Application for Compensation <i>Primary Residential Mortgage Inc. and Meritage Homes of Texas, LLC</i> . Objections/Request for Hearing Due in 21 days. (Attachments: # <a href="#">1</a> Appendix Exhibit List # <a href="#">2</a> Exhibit Exhibit A # <a href="#">3</a> Exhibit B # <a href="#">4</a> Exhibit Exhibit C # <a href="#">5</a> Exhibit Exhibit D # <a href="#">6</a> Exhibit Exhibit E # <a href="#">7</a> Exhibit Exhibit F # <a href="#">8</a> Exhibit Exhibit G # <a href="#">9</a> Exhibit Exhibit H # <a href="#">10</a> Exhibit Exhibit I # <a href="#">11</a> Exhibit Exhibit J # <a href="#">12</a> Exhibit Exhibit K # <a href="#">13</a> Exhibit Exhibit L # <a href="#">14</a> Exhibit Exhibit M # <a href="#">15</a> Affidavit Exhibit N # <a href="#">16</a> Exhibit Exhibit O) (Richard, Gwen) (Entered: 05/15/2024)
05/15/2024	 <a href="#">22</a> (182 pgs; 16 docs)	Exhibit List (Filed By Primary Residential Mortgage Inc ).(Related document(s): <a href="#">21</a> Application for Compensation) (Attachments: # <a href="#">1</a> Exhibit Exhibit A # <a href="#">2</a> Exhibit Exhibit B # <a href="#">3</a> Exhibit # <a href="#">4</a> Exhibit # <a href="#">5</a> Exhibit # <a href="#">6</a> Exhibit # <a href="#">7</a> Exhibit # <a href="#">8</a> Exhibit # <a href="#">9</a> Exhibit # <a href="#">10</a> Exhibit # <a href="#">11</a> Exhibit # <a href="#">12</a> Exhibit # <a href="#">13</a> Exhibit # <a href="#">14</a> Affidavit # <a href="#">15</a> Affidavit) (Richard, Gwen) (Entered: 05/15/2024)
05/16/2024	 <a href="#">23</a> (2 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">20</a> Transcript) No. of Notices: 0. Notice Date 05/16/2024. (Admin.) (Entered: 05/16/2024)
05/28/2024	 <a href="#">24</a> (13 pgs; 2 docs)	Objection <i>With Motion To Strike Portions of Counsel Motion for Compensation</i> (related document(s): <a href="#">21</a> Application for Compensation). Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Proposed Order) (Andersen, James) (Entered: 05/28/2024)
05/28/2024	 <a href="#">25</a> (112 pgs; 5 docs)	Response <i>Attorney's Affidavit for Compensation with Attorney Fees</i> (related document(s): <a href="#">21</a> Application for Compensation). Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4) (Andersen, James) (Entered: 05/28/2024)
06/07/2024	 <a href="#">26</a> (7 pgs; 3 docs)	Agreed Motion to Withdraw as Attorney. Objections/Request for Hearing Due in 21 days. Filed by Plaintiff Elizabeth Thomas (Attachments: # <a href="#">1</a> Proposed Order # <a href="#">2</a> Proposed Order) (Andersen, James) (Entered: 06/07/2024)
06/10/2024	 <a href="#">27</a>	Courtroom Minutes. Time Hearing Held: 1:29 PM - 2:40 PM. Appearances: Kim Altuler an interested party. James Anderson for the Plaintiff. Plaintiff Elizabeth Thomas present. Exhibits admitted: ECF no. 21 15-16. ECF no. 22 5 in case no. 22-00742. ECF no. 23 in case no. 22-00742. ECF no. 25 1-3 not for the truth of the matters asserted. Witnesses sworn in and testimony given: Gwen Richard. The Court heard oral argument. Motion granted; order to be entered. (Related document(s): 14 Courtroom Minutes) (SierraThomasAnderson) (Entered: 06/10/2024)
06/10/2024	 <a href="#">28</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 6/10/2024 1:29:16 PM ]. File Size [ 33967 KB ]. Run Time [ 01:10:46 ]. (admin). (Entered: 06/10/2024)
06/11/2024	 <a href="#">29</a> (1 pg)	Order Granting Compensation (Related Doc # <a href="#">21</a> ). Signed on 6/11/2024. (SierraThomasAnderson) (Entered: 06/11/2024)
06/13/2024	 <a href="#">30</a>	Courtroom Minutes. Time Hearing Held: 10:01 - 10:02. Appearances: none. The Court directed the clerk to close the case for reasons stated on the record. The Court retains jurisdiction to enforce the compensation









		order as stated on the record. (Related document(s): <a href="#">2</a> Order for Conference) (SierraThomasAnderson) (Entered: 06/13/2024)
06/13/2024	<a href="#">31</a> (2 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">29</a> Order on Application for Compensation) No. of Notices: 0. Notice Date 06/13/2024. (Admin.) (Entered: 06/13/2024)
07/03/2024	<a href="#">32</a> (189 pgs; 17 docs)	Joint Motion For Contempt. Objections/Request for Hearing Due in 21 days. Filed by Primary Residential Mortgage Inc Hearing scheduled for 7/18/2024 at 09:00 AM at Houston, Courtroom 404 (MI). (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit # <a href="#">3</a> Exhibit # <a href="#">4</a> Exhibit # <a href="#">5</a> Exhibit # <a href="#">6</a> Exhibit # <a href="#">7</a> Exhibit # <a href="#">8</a> Exhibit # <a href="#">9</a> Exhibit # <a href="#">10</a> Exhibit # <a href="#">11</a> Exhibit # <a href="#">12</a> Exhibit # <a href="#">13</a> Exhibit # <a href="#">14</a> Exhibit # <a href="#">15</a> Exhibit # <a href="#">16</a> Proposed Order) (Richard, Gwen) (Entered: 07/03/2024)
07/18/2024	<a href="#">33</a>	Courtroom Minutes. Time Hearing Held: 9:09 AM - 9:19 AM. Appearances: Gwen Richard for Primary Residential Mortgage Inc. Kim Altsuler for Meritage Homes of Texas. Plaintiff Elizabeth Thomas present. Hearing continued to 08/23/24 at 10:00 AM as stated on the record. (Related document(s): <a href="#">32</a> Motion for Contempt) <b>Hearing scheduled for 8/23/2024 at 10:00 AM at Houston, Courtroom 404 (MI).</b> (SierraThomasAnderson) (Entered: 07/18/2024)
07/18/2024	<a href="#">34</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 7/18/2024 9:09:10 AM ]. File Size [ 5120 KB ]. Run Time [ 00:10:40 ]. (admin). (Entered: 07/18/2024)
07/18/2024	<a href="#">35</a> (2 pgs)	Notice of Hearing on Joint Motion for Civil Contempt. Filed by Primary Residential Mortgage Inc (Richard, Gwen) (Entered: 07/18/2024)
07/18/2024	<a href="#">36</a> (2 pgs)	Certificate of Service (Filed By Primary Residential Mortgage Inc ). (Richard, Gwen) (Entered: 07/18/2024)
08/19/2024	<a href="#">37</a> (8 pgs; 3 docs)	Application <i>SUGGESTION OF BANKRUPTCY</i> Filed by Plaintiff Elizabeth Thomas (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B) (Andersen, James) (Entered: 08/19/2024)
08/21/2024	<a href="#">38</a> (10 pgs; 4 docs)	Joint Response <i>TO MOTION FOR CONTEMPT</i> . Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C) (Andersen, James) (Entered: 08/21/2024)
08/22/2024	<a href="#">39</a> (1 pg)	Order Setting Hearing Signed on 8/22/2024 (Related document(s): <a href="#">32</a> Motion for Contempt) <b>Hearing scheduled for 9/10/2024 at 10:00 AM at Houston, Courtroom 400 (ARP).</b> (abm4) (Entered: 08/22/2024)
08/22/2024	<a href="#">40</a> (1 pg)	Order Reassigning Adversary Proceeding, Signed on 8/22/2024 (SierraThomasAnderson) (Entered: 08/22/2024)
08/24/2024	<a href="#">41</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">39</a> Order Setting Hearing) No. of Notices: 0. Notice Date 08/24/2024. (Admin.) (Entered: 08/24/2024)
08/24/2024	<a href="#">42</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">40</a> Generic Order) No. of Notices: 0. Notice Date 08/24/2024. (Admin.) (Entered: 08/24/2024)

09/05/2024	 <a href="#">43</a> (1 pg)	AO 435 TRANSCRIPT ORDER FORM (3-Day) by Gwen Richard. This is to order a transcript of Hearing on Motion for Compensation, 6/10/2024 before Judge Marvin P. Isgur. Court Reporter/Transcriber: Veritext Legal Solutions (Filed By Primary Residential Mortgage Inc ). (Richard, Gwen) Electronically forwarded to Veritext Legal Solutions on 9.12.24. Estimated completion date 9.15.24. Modified on 9/12/2024 (CSRodriguez). (Entered: 09/05/2024)
09/10/2024	 <a href="#">44</a>	Courtroom Minutes. Time Hearing Held: 10:00 AM to 10:09 AM. Appearances: James Andersen pro se defendant; Alzadia Spires pro se defendant; Elizabeth Thomas pro se; Kim Alsuler for Meritage Homes; Gwen Richard for defendant Primary Residential Mortgage Inc. ERO: yes. Argument heard. Court orders defendants James Andersen and Elizabeth Thomas to submit financial disclosures within 14 days; oral order entered allowing financial disclosures to be filed under seal. Court to enter an order. (Related document(s): <a href="#">32</a> Motion for Contempt) (abm4) (Entered: 09/10/2024)
09/10/2024	 <a href="#">45</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 9/10/2024 10:00:17 AM ]. File Size [ 4168 KB ]. Run Time [ 00:08:41 ]. (admin). (Entered: 09/10/2024)
09/10/2024	 <a href="#">46</a> (2 pgs)	Order in Aid of Order Granting Compensation Signed on 9/10/2024 (Related document(s): <a href="#">29</a> Order on Application for Compensation) (abm4) (Entered: 09/10/2024)
09/12/2024	 <a href="#">47</a> (4 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">46</a> Generic Order) No. of Notices: 0. Notice Date 09/12/2024. (Admin.) (Entered: 09/12/2024)
09/23/2024	 <a href="#">48</a> (1 pg)	AO 435 TRANSCRIPT ORDER FORM (Ordinary (30 days)) by Gwen E. Richard. This is to order a transcript of Hearing on Motion for Contempt, 9/10/2024 before Judge Alfredo R. Perez. Court Reporter/Transcriber: Veritext Legal Solutions (Filed By Primary Residential Mortgage Inc ). (Richard, Gwen) Electronically forwarded to Veritext Legal Solutions on 9/24/24. Estimated completion date 10/24/24 Modified on 9/24/2024 (BrittanyNicklaus). (Entered: 09/23/2024)
09/24/2024	 <a href="#">49</a> (55 pgs)	Sealed Document <i>FILING OF MONTHLY BANK STATEMENTS</i> (Filed By Elizabeth Thomas ). (Andersen, James) (Entered: 09/24/2024)
09/24/2024	 <a href="#">50</a> (3 pgs)	Sealed Document <i>lease and bank statements</i> (Filed By James Michael Andersen ). (Andersen, James) (Entered: 09/24/2024)
10/02/2024	 <a href="#">51</a> (2 pgs)	Notice of Hearing on Joint Motion for Civil Contempt. (Related document(s): <a href="#">32</a> Motion for Contempt) Filed by Primary Residential Mortgage Inc (Richard, Gwen) (Entered: 10/02/2024)
10/03/2024	 <a href="#">52</a> (2 pgs)	Order to Show Cause for Failure to Comply with Order in Aid of Order Granting Compensation, Signed on 10/3/2024 (Related document(s): <a href="#">32</a> Motion for Contempt, <a href="#">46</a> Generic Order) (abm4) (Entered: 10/03/2024)

10/05/2024	 <a href="#">53</a> (4 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">52</a> Generic Order) No. of Notices: 1. Notice Date 10/05/2024. (Admin.) (Entered: 10/05/2024)
10/15/2024	 <a href="#">54</a> (125 pgs; 4 docs)	Sealed Document <i>BANK STATEMENTS</i> (Filed By James Michael Andersen ). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3) (Andersen, James) (Entered: 10/15/2024)
10/15/2024	 <a href="#">55</a> (4 pgs)	Response <i>To Order to Show Cause</i> . Filed by James Michael Andersen (Andersen, James) (Entered: 10/15/2024)
10/15/2024	 <a href="#">56</a> (5 pgs; 2 docs)	Motion to Continue Hearing On (related document(s): <a href="#">32</a> Motion for Contempt). Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Proposed Order) (Andersen, James) (Entered: 10/15/2024)
10/15/2024	 <a href="#">57</a> (1 pg)	Sealed Document <i>Elizabeth Thomas Doctor Medical Excuse</i> (Filed By Elizabeth Thomas ). (Andersen, James) (Entered: 10/15/2024)
10/16/2024	 <a href="#">58</a> (1 pg)	Order Granting Motion for Continuance, Signed on 10/16/2024 (Related document(s): <a href="#">32</a> Motion for Contempt) <b>Hearing scheduled for 11/5/2024 at 09:00 AM at Houston, Courtroom 400 (ARP)</b> . (abm4) (Entered: 10/16/2024)
10/18/2024	 <a href="#">59</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">58</a> Order Setting Hearing) No. of Notices: 1. Notice Date 10/18/2024. (Admin.) (Entered: 10/18/2024)
10/21/2024	 60	Courtroom Minutes. Time Hearing Held: 9:00 AM to 9:13 AM. Appearances: Kim Alsuler for Meritage Homes of Texas; Gwen Richard for Primary Residential Mortgage Inc.; John Burger for P.C. F Properties in TX, LLC. Testimony heard. The Court will enter a supplemental order for additional attorney fees as stated on the record. A further Order to Show Cause hearing is set for an in person hearing on <b>11/5/2024 at 9:00 AM</b> ERO: yes. (Related document(s): <a href="#">32</a> Motion for Contempt). (abm4) (Entered: 10/21/2024)
10/21/2024	 <a href="#">61</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 10/21/2024 9:00:00 AM ]. File Size [ 6296 KB ]. Run Time [ 00:13:07 ]. (admin). (Entered: 10/21/2024)
10/21/2024	 <a href="#">62</a> (2 pgs)	Order to Show Cause and Compelling in Person Appearance at the Hearing Scheduled for November 5, 2024 at 9:00 AM, Signed on 10/21/2024 (Related document(s): <a href="#">32</a> Motion for Contempt, <a href="#">51</a> Notice, <a href="#">52</a> Generic Order) <b>Show Cause hearing to be held on 11/5/2024 at 09:00 AM at Houston, Courtroom 400 (ARP)</b> . (abm4) (Entered: 10/21/2024)
10/21/2024	 <a href="#">63</a> (2 pgs)	Supplemental Order Awarding Further Compensation, Signed on 10/21/2024 (abm4) (Entered: 10/21/2024)
10/22/2024	 <a href="#">64</a> (8 pgs; 2 docs)	Transcript RE: held on 9/10/24 before Judge ALFREDO R. PEREZ. Transcript is available for viewing in the Clerk's Office. Within 21 days, parties are advised to comply with privacy requirements of Fed. R. Bank. P. 9037, ensuring that certain protected information is redacted from transcripts prior to their availability on PACER. Filed by

		Transcript access will be restricted through 01/21/2025. (VeritextLegalSolutions) (Entered: 10/22/2024)
10/23/2024	 <a href="#">65</a> (4 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">62</a> Order Setting Hearing) No. of Notices: 1. Notice Date 10/23/2024. (Admin.) (Entered: 10/23/2024)
10/23/2024	 <a href="#">66</a> (4 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">63</a> Generic Order (Adversary)) No. of Notices: 0. Notice Date 10/23/2024. (Admin.) (Entered: 10/23/2024)
10/26/2024	 <a href="#">67</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">64</a> Transcript) No. of Notices: 1. Notice Date 10/26/2024. (Admin.) (Entered: 10/26/2024)
11/01/2024	 <a href="#">68</a> (4 pgs; 2 docs)	Opposition Motion to Continue Hearing On (related document(s): <a href="#">62</a> Order Setting Hearing, <a href="#">63</a> Generic Order (Adversary)). Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Proposed Order) (Andersen, James) (Entered: 11/01/2024)
11/01/2024	 <a href="#">69</a> (1 pg)	Sealed Document <i>Out on Medical Unitl 11/13/2024</i> (Filed By Elizabeth Thomas ). (Andersen, James) (Entered: 11/01/2024)
11/03/2024	 <a href="#">70</a> (6 pgs; 2 docs)	First Motion to Amend (related document(s): <a href="#">63</a> Generic Order (Adversary)). Filed by James Michael Andersen (Attachments: # <a href="#">1</a> Proposed Order) (Andersen, James) (Entered: 11/03/2024)
11/04/2024	 <a href="#">71</a> (1 pg)	Order Granting Motion for Continuance, Signed on 11/4/2024 (Related document(s): <a href="#">68</a> Motion to Continue). Hearing on the Defendants Motion for Contempt is continued as to Elizabeth Thomas only. <b>Hearing scheduled for 11/25/2024 at 03:00 PM at Houston, Courtroom 400 (ARP).</b> (abm4) (Entered: 11/04/2024)
11/04/2024	 <a href="#">72</a> (6 pgs)	Notice of Appeal filed. (related document(s): <a href="#">63</a> Generic Order (Adversary)). Fee Amount \$298. Appellant Designation due by 11/18/2024. (Andersen, James) (Entered: 11/04/2024)
11/04/2024	 <a href="#">73</a>	Election to Appeal to Court of Appeals <i>Elizabeth Thomas</i> . (Andersen, James) (Entered: 11/04/2024)
11/05/2024	 <a href="#">74</a>	Courtroom Minutes. Time Hearing Held: 9:14 AM to 9:20 AM; 9:36 AM to 9:41 AM. Appearances: James Andersen as Debtor; Kim Altsuler for Meritage Homes of Texas; Gwen Richard for Primary Residential Mortgage Inc.; John Burger for P.C. F Properties in TX, LLC. Parties were ordered to confer about a payment plan. James Andersen is to draft a formal offer letter. All pending matters will be held in abeyance. Parties are to file a joint report by Tuesday, November 12, 2024 as stated on the record and contact the Case Manager. ERO: yes. (Related document(s): <a href="#">32</a> Motion for Contempt, <a href="#">52</a> Order). (abm4) (Entered: 11/05/2024)
11/05/2024	 <a href="#">75</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 11/5/2024 9:14:11 AM ]. File Size [ 2480 KB ]. Run Time [ 00:05:10 ]. (admin). (Entered: 11/05/2024)

11/05/2024	 <a href="#">76</a> (1 pg)	 PDF with attached Audio File. Court Date & Time [ 11/5/2024 9:36:25 AM ]. File Size [ 2264 KB ]. Run Time [ 00:04:43 ]. (admin). (Entered: 11/05/2024)
11/05/2024	 <a href="#">77</a> (1 pg)	AO 435 TRANSCRIPT ORDER FORM (Ordinary (30 days)) by Gwen E. Richard. This is to order a transcript of Motion for Civil Contempt hearing held 11/5/2024 before Judge Alfredo R. Perez. Court Reporter/Transcriber: Veritext Legal Solutions (Filed By Primary Residential Mortgage Inc ). (Richard, Gwen) Electronically forwarded to Veritext on 11/06/2024. Estimated completion date: 12/06/2024. Modified on 11/6/2024 (glc4). (Entered: 11/05/2024)
11/06/2024	 <a href="#">78</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">71</a> Order Setting Hearing) No. of Notices: 1. Notice Date 11/06/2024. (Admin.) (Entered: 11/06/2024)
11/07/2024	 <a href="#">79</a> (1 pg)	Clerk's Notice of Filing of an Appeal. On 11/04/2024, Elizabeth Thomas filed a notice of appeal. The appeal has been assigned to U.S. District Judge George C Hanks, Jr, Civil Action 4:24cv4354. Parties notified (Related document(s): <a href="#">72</a> Notice of Appeal). (bwl4) (Entered: 11/07/2024)
11/09/2024	 <a href="#">80</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">79</a> Clerk's Notice of Filing of an Appeal) No. of Notices: 1. Notice Date 11/09/2024. (Admin.) (Entered: 11/09/2024)
11/12/2024	 <a href="#">81</a> (3 pgs)	Status Report (Filed By Primary Residential Mortgage Inc ). (Richard, Gwen) (Entered: 11/12/2024)
11/14/2024	 <a href="#">82</a> (3 pgs)	Appellant Designation of Contents For Inclusion in Record On Appeal (related document(s): <a href="#">72</a> Notice of Appeal, 73 Election to Appeal). (Andersen, James) (Entered: 11/14/2024)
11/18/2024	 <a href="#">83</a> (4 pgs; 2 docs)	Opposition Motion to Continue Hearing On (related document(s): <a href="#">70</a> Motion to Amend). Filed by Elizabeth Thomas (Attachments: # <a href="#">1</a> Proposed Order) (Andersen, James) (Entered: 11/18/2024)
11/18/2024	 <a href="#">84</a> (1 pg)	Sealed Document <i>THOMAS MECIAL TO 12/4/2024</i> (Filed By Elizabeth Thomas ). (Andersen, James) (Entered: 11/18/2024)
12/04/2024	 <a href="#">85</a> (10 pgs; 2 docs)	Transcript RE: held on before Judge ALFREDO R. PEREZ. Transcript is available for viewing in the Clerk's Office. Within 21 days, parties are advised to comply with privacy requirements of Fed. R. Bank. P. 9037, ensuring that certain protected information is redacted from transcripts prior to their availability on PACER. Filed by Transcript access will be restricted through 03/4/2025. (VeritextLegalSolutions) (Entered: 12/04/2024)
12/06/2024	 <a href="#">86</a> (3 pgs)	BNC Certificate of Mailing. (Related document(s): <a href="#">85</a> Transcript) No. of Notices: 1. Notice Date 12/06/2024. (Admin.) (Entered: 12/06/2024)
04/16/2024		Judge Marvin Isgur added to case. (hlc4) (Entered: 04/16/2024)

04/24/2024		The order issued at ECF no. 5 in case 24-3066 was served in accordance with the order. (SierraThomasAnderson) (Entered: 04/24/2024)
05/06/2024		***Delivery Confirmation; delivery date(s) 4/30/2024 (Related document(s): <a href="#">12</a> Document(s) Sent). (hlc4) (Entered: 05/06/2024)
06/13/2024		Adversary Case 4:24-ap-3066 Closed. (SierraThomasAnderson) (Entered: 06/13/2024)
08/22/2024		Judge Alfredo R Perez added to case. Involvement of Judge Marvin Isgur Terminated. (tjl4) (Entered: 08/22/2024)
08/22/2024		The hearing previously scheduled for 8/23/24 at 10:00 am before Judge Marvin Isgur is *canceled* due to case reassignment. (tjl4) (Entered: 08/22/2024)
10/02/2024		Hearing Set by Request (Related document(s): <a href="#">32</a> Motion for Contempt). Contacted by Sarah Cartwright. Movant to notice all interested parties and file a certificate of service with the court. <b>Hearing scheduled for 10/21/2024 at 09:00 AM at Houston, Courtroom 400 (ARP).</b> (tjl4) (Entered: 10/02/2024)
11/07/2024		Receipt of Notice of Appeal( <a href="#">24-03066</a> ) [appeal,ntcapl] ( 298.00) Filing Fee. Receipt number A25694755. Fee amount \$ 298.00. (U.S. Treasury) (Entered: 11/07/2024)
11/18/2024		<i>Notice of Cancellation of Hearing.</i> The hearing previously scheduled for 11/25/24 at 3:00 pm is *canceled* per the abatement of the case issued at ECF No. 74 (Related document(s): <a href="#">32</a> Joint Motion for Contempt) (tjl4) (Entered: 11/19/2024)
11/20/2024		Remark Case review waiting for the appellee to file their record of designation (hl4) (Entered: 11/20/2024)

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ELIZABETH THOMAS,  
Plaintiff**

**v.**

**MERITAGE HOMES OF TEXAS, ET AL.,  
Defendants**

§  
§  
§  
§  
§  
§  
§

**ADVERSARY NO. 24-3066**

**PRIMARY RESIDENTIAL MORTGAGE, INC. AND MERITAGE HOMES OF TEXAS,  
LLC'S JOINT MOTION FOR ORDER OF CIVIL CONTEMPT**

**There will be a hearing on this motion on July 18, 2024 at 9:00 a.m. in Courtroom No. 404.**

Primary Residential Mortgage, Inc. ("PRMI") and Meritage Homes of Texas, LLC ("Meritage") file this Joint Motion for Order of Civil Contempt against Elizabeth Thomas ("Thomas") and James M. Andersen ("Andersen"), and respectfully show the following:

**I. INTRODUCTION**

1. Thomas and Andersen have defied and ignored this Court's Order to pay attorney's fees to PRMI and Meritage. On June 11, 2024, the Court entered an Order Granting Compensation, ordering Thomas and Andersen to pay \$13,657.50 to PRMI and \$4,612.50 to Meritage in full and in cash within 14 days of the entry of the Order. (Dkt. 29). Neither Thomas nor Andersen has paid one dollar to PRMI or Meritage. PRMI and Meritage therefore move for Thomas and Andersen to be held in contempt of court.

2. Thomas and Anderson have used the courts to endlessly tie PRMI, Meritage, and others up in frivolous lawsuits. These efforts resulted in orders from several District Judges within the Southern District prohibiting Thomas and Andersen from removing cases to the Southern District courts without first securing leave from the Chief Judge of the Southern District. Thomas and Andersen continued to remove cases to the Southern District as a means of extending

groundless lawsuits, thereby willfully violating multiple orders, including two orders from Judge Hittner in Civil Action H-19-559 on April 16, 2019 (the “Hittner Orders”); Judge Bennett in Civil Action 22-705 on February 16, 2023 (the “Bennett Order”); and Judge Hanks in Civil Action 22-742 on March 30, 2023 (the “Hanks Order”) (collectively, the “Removal Orders”). Thomas and Andersen acknowledged on the record that they were aware of the orders and that their violations were willful. As a result, this Court ordered Thomas and Andersen to pay attorneys’ fees to PRMI and Meritage incurred as a result of their last improper removal to this Court. The payments were due on June 21, 2024, but as of the filing of this motion, Thomas and Andersen have not paid or contacted counsel for PRMI and Meritage to make payment arrangements.

## **II. UNDISPUTED FACTS**

3. On April 23, 2024, the Court ordered Thomas and Andersen to appear and show cause why they should not be held in civil contempt and sanctioned.

4. On April 29, 2024, the Court remanded this proceeding and three others to the state courts in which each action originated. The Court retained jurisdiction over any compensatory civil sanctions or requests for compensation sought against Thomas and Andersen.

5. On May 1, 2024, the Court conducted a show cause hearing relating Thomas and Andersen’s ongoing violations of the Removal Orders. At this hearing, and in response to the Court’s questioning, Thomas and Andersen admitted to their willful violations of the Removal Orders. Thomas and Anderson also acknowledged that they owe money to compensate certain opposing parties for their intentional violation of the Removal Orders. Thomas agreed to dismiss her suit against MTH Lending Group, L.P. with prejudice in order to resolve all issues in that case. The Court reminded Thomas and Andersen that any compensation sought by other defendants in relation to the violation of the Removal Orders remains before the Court.

6. The Court then established a process by which PRMI and Meritage could obtain a hearing to determine the appropriate amount of compensation due as a consequence of Thomas and Andersen's violations of the Removal Orders.

7. On May 15, 2024, PRMI and Meritage filed a Joint Motion for Compensation in compliance with the Court's directive.

8. On June 10, 2024, the Court conducted an evidentiary hearing on the Joint Motion for Compensation. On June 11, 2024, the Court entered an Order Granting Compensation, ordering Thomas and Andersen to pay \$13,657.50 to PRMI and \$4,612.50 to Meritage in full and in cash within 14 days of the entry of the Order. (Dkt. 29).

9. More than fourteen days have passed since the Court entered its Order Granting Compensation, but no funds have been tendered by either Thomas or Andersen to PRMI or Meritage. Neither Thomas nor Andersen has contacted counsel for PRMI or Meritage to discuss payment arrangements or any alternative arrangements.

### **III. ARGUMENT AND AUTHORITIES**

#### **A. The Court Has Authority To Find Thomas And Andersen In Civil Contempt.**

10. The Court possesses inherent authority to enforce its orders through civil contempt and may do so even after a final judgment in order to vindicate the sanctity of its prior orders and the court system in general. *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5<sup>th</sup> Cir. 1985). A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5<sup>th</sup> Cir. 1995).

11. In a civil contempt proceeding, the movant must establish by clear and convincing evidence that (1) a court order was in effect, (2) the order required specific conduct by the

respondent, and (3) the respondent failed to comply with the court's order. *United States v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5<sup>th</sup> Cir. 2004); *Petroleos Mexicanos v. Crawford Enters.*, 826 F.2d 392, 401 (5<sup>th</sup> Cir. 1987). "Willfulness is not an element of civil contempt. *Petroleos Mexicanos*, 826 F.2d at 401; *Jim Walter Res., Inc. v. Int'l Union, United Mine Workers Am.*, 609 F.2d 165, 168 (5<sup>th</sup> Cir. 1980) ("In civil contempt proceedings the question is not one of intent but whether the alleged contemnors have complied with the court's order.") (citation omitted).

12. The clear and convincing evidence in a contempt proceeding is "that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitation, of the truth of the precise facts of the case." *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5<sup>th</sup> Cir. 1995). If the movant establishes a prima facie case, the respondent "may assert a present inability to comply with the order in question" as a defense. *United States v. Rylander*, 460 U.S. 752, 757 (1983).

13. Contempt may be civil or criminal. *Int'l Union, United Mine Workers of American v. Bagwell*, 512 U.S. 821 (1994). Civil contempt is "designed to compel future compliance with a court order, [is] coercive in nature and avoidable through compliance." *Id.*

14. "Upon a finding of contempt, the district court has broad discretion in assessing sanctions to protect the sanctity of its decrees and the legal process." *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 582 (5<sup>th</sup> Cir. 2005). Civil contempt may be used for either or both of two purposes: to coerce the contemnor into compliance with the court's order and to compensate the complaining party for losses sustained. *Am. Airlines, Inc. v. Allied Pilots Ass'n.*, 228 F.3d 574, 585 (5<sup>th</sup> Cir. 2000).

15. When holding a party in civil contempt, courts have the power to order either imprisonment or the payment of fines. *Bagwell*, 512 U.S. at 827. Imprisonment for a fixed term is coercive, rather than punitive, when the party engaged in contempt is given the option of earlier release if he complies with a court order. *Id.* at 828. The court may set a per diem fine to coerce the contemnor to comply with an order and considers the following factors in setting the fine: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanction may impose; and (4) the willfulness of the contemnor in disregarding the court's order. *Lamar Fin. Corp. v. Adams*, 918 F.2d 564, 567 (5<sup>th</sup> Cir. 1990) (no abuse of discretion in imposing a \$500 per diem sanction for contemnor's failure to comply with an order to produce certain documents requested in discovery).

**B. Thomas And Andersen Violated The Court's Order Commanding Them To Pay PRMI and Meritage.**

16. Just as they ignored the Removal Orders, Thomas and Andersen have ignored this Court's order compelling them to compensate PRMI and Meritage for expenses incurred as a result of their violations of the Removal Orders. Thomas and Anderson have not paid amounts ordered. Further, neither Thomas nor Andersen contacted counsel for PRMI or Meritage to discuss seeking an extension, to propose payment terms that would allow for payment over time, or to discuss the possibility of dismissing the frivolous litigation against PRMI and Meritage as a means of resolving all outstanding issues. In short, Thomas and Andersen have completely ignored the Court's June 11, 2024, Order.

**C. Thomas's And Andersen's Actions Of Contempt Have Caused PRMI And Meritage To Incur Additional Attorney's Fees.**

17. Thomas's and Andersen's acts of contempt without justification warrant enforcement by this Court, including, but not limited to, an assessment of costs and fees against them. Their collective failure to acknowledge and abide by the Removal Orders and the Court's

June 11, 2024, Order Granting Compensation have caused PRMI and Meritage to incur unnecessary expenses and delay in terminating this litigation and collecting the compensation awarded by this Court. PRMI and Meritage ask the Court to order Thomas and Andersen to appear and show cause why they should not be held in civil contempt; to award PRMI and Meritage their expenses, including attorney's fees, incurred in preparing this Joint Motion for Civil Contempt; and ultimately to hold Thomas and Andersen in civil contempt for their failure to comply with the Court's June 11, 2024, Order as this Court deems proper.

#### **IV. PRAYER**

For the foregoing reasons, PRMI and Meritage pray that this Court enter an Order:

- (1) Granting PRMI's and Meritage's Joint Motion for Order of Civil Contempt;
- (2) Ordering Thomas and Andersen to appear before this Court to show cause for failing to comply, or even attempting to comply, with the June 11, 2024, Order;
- (3) Finding Thomas and Andersen in civil contempt;
- (4) Imposing sanctions of \$500 per day and imprisonment, as authorized by the law, until such time as Thomas and Andersen comply with the Court's June 11, 2024, Order or come to terms with PRMI and Meritage such that the parties jointly petition the Court for relief from that Order;
- (5) Awarding PRMI and Meritage its expenses incurred in preparing this Motion, including its attorney's fees in an amount to be proven at the show cause hearing; and
- (6) Granting PRMI and Meritage any and all such further relief at law or in equity to which the Court may find them justly entitled.

Respectfully submitted,

**IRELAN MCDANIEL**

A Professional Limited Liability Company

By: /s/ Gwen E. Richard

Gwen E. Richard

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2520 Caroline St., 2<sup>nd</sup> Floor

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**ATTORNEY FOR PRIMARY  
RESIDENTIAL MORTGAGE, INC.****PECKAR & ABRAMSON, P.C.**By: /s/ Kim Altsuler

Kim Altsuler

Federal Bar No. 21838

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Houston, TX 77027

Telephone: 713-568-1500

Facsimile: 713-568-1490

**ATTORNEYS FOR MERITAGE HOMES  
OF TEXAS, LLC****CERTIFICATE OF CONFERENCE**

I certify that on July 3, 2024, at 10:16 a.m., I conferred by telephone with James M. Andersen, in his individual capacity and as counsel for Elizabeth Thomas, about the relief requested in Primary Residential Mortgage, Inc.'s and Meritage Homes of Texas, LLC's Joint Motion for Order of Civil Contempt. I also conferred with both Ms. Thomas and Mr. Andersen by email on July 2, 2024. Ms. Thomas and Mr. Andersen oppose the requested relief.

/s/ Gwen E. Richard

Gwen E. Richard

**CERTIFICATE OF SERVICE**

I certify that on July 3, 2024, a copy of Primary Residential Mortgage, Inc.'s and Meritage Homes of Texas, LLC's Joint Motion for Order of Civil Contempt was served by filing it with the Court's Case Management/Electronic Case Filing system and by email as follows:

James M. Andersen  
P.O. Box 58554  
Webster, Texas 77598  
Email: [jandersen.law@gmail.com](mailto:jandersen.law@gmail.com)

Dale M. Holiday  
Germer PLLC  
America Tower  
2929 Allen Parkway, Suite 2900  
Houston, Texas 77019  
Email: [holidyefile@germer.com](mailto:holidyefile@germer.com)

/s/ Gwen E. Richard

Gwen E. Richard

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

ELIZABETH THOMAS,	.	Case No. 24-03066
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
MIRAMAR LAKE HOMEOWNERS	.	
ASSOCIATION, INC. et al.,	.	515 Rusk Street
	.	Houston, TX 77002
Defendants.	.	
	.	Wednesday, May 1, 2024
. . . . .	.	7:57 a.m.

TRANSCRIPT OF SHOW CAUSE HEARING  
BEFORE THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Elizabeth Thomas: James Michael Andersen, Attorney at Law  
By: JAMES MICHAEL ANDERSEN, ESQ.  
17041 El Camino Real, Ste. 204  
Houston, TX 77058  
281-488-2800

For Miramar Lake Homeowners Association, Inc.: Germer PLLC  
By: RETT HOLIDY, ESQ.  
2929 Allen Parkway #2900  
Houston, TX 77019  
713-650-1313

Audio Operator: Courtroom ECRO Personnel

Transcription Company: Access Transcripts, LLC  
10110 Youngwood Lane  
Fishers, IN 46048  
(855) 873-2223  
[www.accesstranscripts.com](http://www.accesstranscripts.com)

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

APPEARANCES (Continued):

For Meritage Homes  
Corporation, Meritage  
Homes of Texas:

Peckar & Abramson, P.C.  
By: KIM ALTSULER, ESQ.  
1717 W Loop S, Suite 1400  
Houston, TX 77027  
713-568-1500

Also Present:

GWEN RICHARD, ESQ.  
JOHN BERGER, ESQ.



1 (Proceedings commence at 7:57 a.m.)

2 THE COURT: Good morning, please be seated.

3 All right. This morning we are here on an eight  
4 o'clock hearing on a civil contempt matter. This is a show  
5 cause hearing. The case number is Adversary Proceeding  
6 24-3066. Please come forward and make your appearances at the  
7 hearing. Come on forward, please, to the podium.

8 MR. HOLIDY: Good morning, Your Honor. I'm Rett  
9 Holiday. I represent Defendant MTH Lending Group, LP.

10 THE COURT: Thank you, Mr. Holiday.

11 MR. ANDERSEN: James Andersen, representing Elizabeth  
12 Thomas.

13 THE COURT: Good morning, Mr. Andersen.

14 MR. ANDERSEN: Good morning.

15 MS. THOMAS: Elizabeth Thomas.

16 THE COURT: Good morning, Ms. Thomas.

17 MS. THOMAS: Good morning, Your Honor.

18 THE COURT: So Mr. Andersen, Ms. Thomas, why did you  
19 violate multiple orders of the Court?

20 MR. ANDERSEN: Your Honor, I just -- I was trying  
21 to -- in my thought processes, I was under a lot of stress.  
22 I'm the caregiver for my brother who fell two years ago and  
23 lost his memory. I'm the sole caregiver for this brother. And  
24 additionally, I've recently been diagnosed with heart problems,  
25 and there were ongoing treatments for that right now and tests



1 to see what's done. So my thought process, it was not a  
2 deliberate thing, I just was --

3 THE COURT: Of course it was a deliberate thing. You  
4 had multiple court orders that told you not to do it, and you  
5 did it. I want to know why did you violate the court orders?

6 MR. ANDERSEN: It was not intentional, Your Honor.

7 THE COURT: Of course it was intentional. You filed  
8 the -- well, maybe I'm wrong, let me back up. Did you file the  
9 notice of removal?

10 MR. ANDERSEN: Yes, Your Honor.

11 THE COURT: Okay. So that was an intentional act.  
12 Don't tell me it wasn't intentional.

13 MR. ANDERSEN: Why?

14 THE COURT: Why did you file a notice of removal  
15 knowing that it violated court orders issued by the United  
16 States District Court?

17 MR. ANDERSEN: At the time, I just -- I was -- I just  
18 didn't take the time to go back and check things in my mind and  
19 on the checklist, and it was just -- I mean, that's all I can  
20 tell you, I just --

21 THE COURT: Are you still capable of practicing law?  
22 Or have you tendered your law license resignation?

23 MR. ANDERSEN: No, I'm still practicing law.

24 THE COURT: I didn't ask if you were still  
25 practicing, I know that. I think you're telling me you're not

1 capable of practicing law right now. Have you tendered your  
2 resignation --

3 MR. ANDERSEN: No.

4 THE COURT: -- as a lawyer? Well, why not if you  
5 can't read and comply with orders of the Court? If you're not  
6 capable of doing that, how are you capable to practice law?

7 MR. ANDERSEN: I was just trying to get it done and  
8 in a hurry, and with all the other things on my mind, I just --  
9 I did not take the time to thoroughly research that option.  
10 And if I had, I would have discovered that.

11 THE COURT: What option? I don't know what you're  
12 talking about. You were barred from doing something, and  
13 you --

14 MR. ANDERSEN: Yeah.

15 THE COURT: -- still did it. What was the option  
16 that you couldn't think through?

17 MR. ANDERSEN: Well, I was trying to get Ms. Thomas'  
18 case transferred to the New York.

19 THE COURT: Well, I know that's what you were trying  
20 to do. How did you think you could do that in the light of the  
21 court orders that said you couldn't?

22 MR. ANDERSEN: It was --

23 THE COURT: Ms. Thomas, why did you think you could  
24 violate the court orders? You knew they were out there.

25 MS. THOMAS: I knew they were out there, Your Honor.

1 I did.

2 THE COURT: So why did you think you could violate  
3 them?

4 MS. THOMAS: Because I -- I talked to my -- I talked  
5 with my lawyer in New York, and he said that Judge Lang  
6 maintained jurisdiction over his -- his own orders. So he said  
7 that Judge Lang can enforce his own orders.

8 THE COURT: What does that have to do with violating  
9 the orders of the United States District Court for the Southern  
10 District of Texas?

11 MS. THOMAS: You're right.

12 THE COURT: What made you think you could do that?

13 MS. THOMAS: I couldn't do that. I --

14 THE COURT: What is that?

15 MS. THOMAS: I said, I know I couldn't -- I shouldn't  
16 have done that.

17 THE COURT: So look, we've now remanded the case, but  
18 y'all owe a ton of money to people to compensate them for your  
19 violation of the court orders. Are you aware of that?

20 MS. THOMAS: Yes, Your Honor.

21 MR. ANDERSEN: Yes.

22 THE COURT: How are you going to put that money? Do  
23 y'all have the money?

24 MR. ANDERSEN: No.

25 THE COURT: Well, what are we going to do about that?



1 MR. ANDERSEN: I --

2 MS. THOMAS: Find a way to get it.

3 THE COURT: What is that?

4 MS. THOMAS: I said, find a way to get the money.

5 THE COURT: Well, finding the way to get the money is  
6 to make you sit in a jailhouse until you find the money.

7 MS. THOMAS: Okay.

8 THE COURT: You don't get to just violate court  
9 orders.

10 MS. THOMAS: Okay.

11 THE COURT: You need to find the money to compensate  
12 them.

13 MS. THOMAS: Yes.

14 THE COURT: I don't know what they spent. They're  
15 going to need to prove it. We're going to set up a process  
16 where you're going to reimburse them for what it cost them  
17 because you violated intentionally court orders.

18 MS. THOMAS: Yes, Your Honor.

19 THE COURT: Y'all going to violate them again?

20 MS. THOMAS: No.

21 MR. ANDERSEN: No, Your Honor.

22 MS. THOMAS: No.

23 THE COURT: But what -- since you violated them,  
24 what, this is your third violation. What makes me think that  
25 you're not going to violate them another time?

1 MS. THOMAS: I'm not coming back here in front of  
2 you.

3 THE COURT: What is that?

4 MS. THOMAS: I said, I don't want to have to come  
5 back here.

6 THE COURT: Well, this is your third violation. So  
7 why do I believe you this time? That is the question.

8 MS. THOMAS: I'm not going to do it anymore.

9 THE COURT: What are you fighting for down in state  
10 court so hard?

11 MS. THOMAS: Well, it's a combination of things. In  
12 a -- in one of the cases, Attorney McClure, who --

13 THE COURT: Now, what are you fighting to keep? What  
14 are you fighting these guys about?

15 MS. THOMAS: It's a -- it's a mortgage case.

16 THE COURT: So you may just lose it.

17 MS. THOMAS: Yeah.

18 THE COURT: Right?

19 MS. THOMAS: Yeah.

20 THE COURT: Do you want me to give you all some time  
21 to see if you can work out something right now where we'll  
22 transfer title and make it all really clear that you lose, they  
23 win? Or do you want to be here for compensatory hearings that  
24 we'll schedule in the future? What do you want to try and do?

25 MS. THOMAS: Whatever -- whatever you order me to do,

1 that's all.

2 THE COURT: No, I'm not going to order you to be here  
3 for those. You have the right to a hearing and not to try and  
4 settle it. So if you want a hearing, we'll give you a hearing  
5 on compensatory sanctions. I don't have the authority, by the  
6 way, to criminally punish you. I can just make you do what  
7 you've done now, which is we've remanded the case, and I can  
8 make you pay them for the cost of your violation of the order.  
9 But beyond that, I don't have criminal authority. I've had to  
10 refer this to the criminal authorities because it looks to me  
11 like you're in criminal contempt.

12 MS. THOMAS: Okay.

13 THE COURT: So you may have a criminal problem that  
14 comes up, and I've referred it to the U.S. Attorney, and I've  
15 referred it to the FBI.

16 MS. THOMAS: Okay.

17 THE COURT: Because you all directly violated court  
18 orders. That's a criminal contempt. We're here today on the  
19 civil contempt, which is how we're going to make people whole  
20 for your violation. I'm not punishing you. That will be up to  
21 somebody else.

22 MS. THOMAS: Okay.

23 THE COURT: You don't need to fear me punishing you.  
24 You can fear me coercing you into getting the right thing done  
25 because that, I will do.

1 Let me hear from the other side for a minute.

2 Mr. Holiday?

3 MR. HOLIDY: Thank you, Your Honor. This removal was  
4 filed at 10:01 a.m., which was one minute after the start of  
5 what was supposed to be a trial in the Cause Number 2016-87941.  
6 The night before that, Ms. Thomas, pro se, filed a recusal to  
7 recuse Judge Morris from the case. So the efforts that we were  
8 trying to get to was a trial that --

9 THE COURT: And what are you trying to get at the  
10 trial?

11 MR. HOLIDY: What I was trying to get at the trial  
12 was a win for my client.

13 THE COURT: But the win --

14 MR. HOLIDY: Because --

15 THE COURT: -- would be what?

16 MR. HOLIDY: A finding that she is barred by the  
17 statute of limitations, number one. This house was purchased  
18 in 2007. Number two, she is judicially estopped from asserting  
19 these claims because of her 2010 bankruptcy in which  
20 Mr. Andersen also represented her.

21 THE COURT: But just the claims against your client  
22 dismissed with prejudice?

23 MR. HOLIDY: Dismissed with prejudice.

24 THE COURT: Forget the findings. Don't you want a  
25 dismissal with prejudice?

1 MR. HOLIDY: That's what I want, a dismissal.

2 THE COURT: Do you want anything beyond the dismissal  
3 with prejudice?

4 MR. HOLIDY: I want a dismissal with prejudice from  
5 the 2016 case and the 2017 case. That's all I want.

6 THE COURT: And if you get a dismissal with  
7 prejudice, do you want more money from them over what they've  
8 done here?

9 MR. HOLIDY: I do not.

10 THE COURT: Do you want time to talk to them and see  
11 if they're going to agree to a dismissal with prejudice?

12 MR. HOLIDY: I'm happy to do that.

13 THE COURT: Do you all want to talk to him or do you  
14 want a hearing? What do you all want to do?

15 MS. THOMAS: So he's asking for me to dismiss my --  
16 my claims against MTH Lending Group with prejudice?

17 THE COURT: Well, he's saying he will do a deal with  
18 you if you want to dismiss all your claims with prejudice.  
19 Otherwise, we're going to proceed with their hearing on how  
20 much money you owe them. Those are your choices. Do you want  
21 to talk to them about that or do you want to go ahead with --  
22 I'll set you down for a hearing? You're not going to keep  
23 doing this.

24 MS. THOMAS: No, I'm not going to keep doing this.

25 THE COURT: So, you know, you can go down and you can



1 have your trial in state court, and you can pay money here.  
2 All that's just fine with me. I'm not going to stop you from  
3 having your trial in state court. He's willing to do a deal  
4 where you don't have to have the trial in state court and you  
5 don't have to pay him money. I don't care if you do that or  
6 not. It's up to you. Do you want to talk to him or not talk  
7 to him?

8 MS. THOMAS: I'll talk to him.

9 THE COURT: All right. We'll come back at -- how  
10 long do you all want to talk? I don't think this should take  
11 long. Ten minutes?

12 MR. HOLIDY: Ten minutes is great, Your Honor.

13 THE COURT: I'm going to come back at 8:20, and we'll  
14 see if you all have worked this out. And if you haven't worked  
15 it out, we're going to set you for a hearing, give you an  
16 opportunity to file your compensatory relief, and then we'll  
17 come back for an evidentiary hearing. There's a room outside,  
18 and the courtroom security officer in the back will show you  
19 all to a room where you can talk. I want you to be in the room  
20 with him, please, sir. Thank you.

21 MR. HOLIDY: Thank you, Your Honor.

22 THE COURT: Thank you.

23 THE BAILIFF: All rise.

24 (Recess taken at 8:10 a.m.)

25 (Proceedings resume at 8:18 a.m.)



1 THE BAILIFF: All rise.

2 THE COURT: Please be seated.

3 All right. We're going back on the record in  
4 Adversary Proceeding 24-3066. How do the parties wish to  
5 proceed?

6 MR. HOLIDY: Your Honor, we have reached an agreement  
7 for my client with Ms. Thomas and Mr. Andersen where they are  
8 agreeing to dismiss with prejudice their claims against my  
9 client, MTH Lending Group, LP. She has agreed that a non-suit  
10 with prejudice will be filed in the cases. There will be one  
11 document with all of the captions on it. And she has agreed to  
12 sign those documents when I prepare them and send them to her.

13 THE COURT: How long will it take you to prepare  
14 them?

15 MR. HOLIDY: I will have those prepared today, and I  
16 will email those to Ms. Thomas and Mr. Andersen.

17 THE COURT: And how long will it take you all to  
18 review them?

19 MS. THOMAS: As soon as he sends it to me, I can  
20 just -- I can sign it and send it back to him.

21 THE COURT: Well, you need to read them.

22 Mr. Andersen, how long will it take you to review  
23 them?

24 MR. ANDERSEN: Same day.

25 THE COURT: Pardon me?



1 MR. ANDERSEN: Same day I get it, Your Honor, I'll  
2 read it.

3 THE COURT: All right.

4 So, Ms. Thomas, I want you to raise your right hand,  
5 please.

6 ELIZABETH THOMAS, PLAINTIFF, SWORN

7 THE COURT: All right. Tell me your name, please.

8 MS. THOMAS: Elizabeth Thomas.

9 THE COURT: Ms. Thomas, my understanding is that you  
10 have reached an agreement to dismiss with prejudice all of the  
11 claims that you have against all of the defendants in this  
12 removed cause of action. Is that correct?

13 MS. THOMAS: No, Your Honor.

14 THE COURT: Okay.

15 MS. THOMAS: I didn't agree to do that.

16 THE COURT: What did you agree to do?

17 MS. THOMAS: I agreed to dismiss my claims with  
18 prejudice against MTH Lending Group --

19 THE COURT: Okay.

20 MS. THOMAS: -- who Mr. -- who he represents.

21 THE COURT: All right. And do you understand that  
22 you have the right to proceed to a full trial on the merits in  
23 state court instead of doing this?

24 MS. THOMAS: I understand that I do, but I -- I'm --  
25 I listened to his argument. I would have a hurdle. I -- I did

1 file in 2011. I do believe that I'll have some statute of  
2 limitations issues going on. It wouldn't make sense to keep  
3 doing this if I don't feel like I'm going to prevail.

4 THE COURT: You have the right not to make this  
5 agreement. I just want to be sure you understand that.

6 MS. THOMAS: I do. I understand that, Your Honor.

7 THE COURT: Okay.

8 MS. THOMAS: I want to make the agreement.

9 THE COURT: If you don't make the agreement, I'll set  
10 you for a compensatory hearing to Mr. Holiday's client. But  
11 you've decided, in fact, you would rather just dismiss them  
12 with prejudice.

13 MS. THOMAS: Yes, Your Honor. I did make that  
14 decision to enter an agreement.

15 THE COURT: Do you understand that a dismissal with  
16 prejudice means you can never sue them again?

17 MS. THOMAS: I understand that. Yes, Your Honor.

18 THE COURT: Okay. And are you willingly doing this?

19 MS. THOMAS: I'm willingly doing this.

20 THE COURT: Okay. And you understand that any  
21 compensatory relief that might be sought by any other defendant  
22 who you don't have a deal with, that they can still seek that  
23 here because of what you all did. So this doesn't resolve the  
24 matters before me. It only resolves your matters with  
25 Mr. Holiday's client.

1 MS. THOMAS: Yes, Your Honor.

2 THE COURT: So you could still be back here.

3 MS. THOMAS: I know.

4 THE COURT: All right.

5 Would you raise your hand, Mr. Andersen?

6 JAMES MICHAEL ANDERSEN, PLAINTIFF'S COUNSEL, SWORN

7 THE COURT: All right. Do you understand that you're  
8 not being compelled to do this on behalf of your client or  
9 individually?

10 MR. ANDERSEN: Yes, Your Honor.

11 THE COURT: And do you understand that this leaves  
12 you open for sanctions that might be imposed, compensatory  
13 sanctions, by any other defendant?

14 MR. ANDERSEN: Yes, I do, Your Honor.

15 THE COURT: And you understand it leaves open,  
16 because there's nothing you can do about it, issues about  
17 whether your state bar license should be removed?

18 MR. ANDERSEN: Yes, Your Honor.

19 THE COURT: And those are not getting resolved today?

20 MR. ANDERSEN: Yes, Your Honor. I understand that.

21 THE COURT: All right.

22 Does any other party have any questions? Come on  
23 forward, please.

24 MS. ALTSULER: Thank you. Your Honor, my name is Kim  
25 Altsuler. I am an attorney for Meritage Homes Corporation and



1 Meritage Homes of Texas LLC and a number of individual current  
2 or former Meritage Homes employees that Ms. Thomas has sued. I  
3 wanted to appear because I was struck by a comment Ms. Thomas  
4 made that she's not dismissing any other defendants, only  
5 Mr. Holiday's clients.

6 The removed cause numbers, 2016-87941 that was  
7 remanded, my clients were dismissed from that cause number in  
8 the state court several years ago. I believe Ms. Thomas thinks  
9 that my client is in that lawsuit, and Ms. Thomas also believes  
10 that the removal into this court removed more than just that  
11 lawsuit. I think that her position is she was also removing  
12 three other cases that are consolidated under a different cause  
13 number in the 333rd Court in Harris County.

14 So I think what I'm asking the Court to do is could  
15 you clarify for Mr. Andersen and Ms. Thomas that the order  
16 precluding the removals applies to all of these suits that  
17 are -- they're all listed in your remand order because I fear  
18 that we're going to be still on this revolving door of  
19 removals.

20 THE COURT: So let me be very, very, very clear.  
21 First, I've remanded everything that got removed. Second, they  
22 are completely barred from removing anything into this court,  
23 meaning the United States District Court and the United States  
24 Bankruptcy Court for the Southern District of Texas, unless  
25 they get leave from the issuing injunctive district judges,

1 period, no exceptions. Is that clear enough?

2 MS. ALTSULER: Thank you, Your Honor.

3 THE COURT: Now, do you want a hearing on whether  
4 your client will receive compensation as a consequence of the  
5 wrongful removal?

6 MS. ALTSULER: Yes, Your Honor, that would be great.

7 THE COURT: All right. And how long do you want for  
8 that hearing? When can you be ready for it? You'll need to  
9 file the appropriate pleadings, give notice to both  
10 Mr. Andersen and Ms. Thomas.

11 MS. ALTSULER: From my side, the hearing shouldn't  
12 take more than 15 minutes.

13 THE COURT: No, no. When will you file your motion  
14 that outlines what the compensation is that your client is  
15 entitled to?

16 MS. ALTSULER: In two weeks.

17 THE COURT: Two weeks?

18 MS. ALTSULER: Is that sufficient? Thank you.

19 THE COURT: Okay. And how long do you all want to  
20 respond to her motion seeking compensation from you for the  
21 wrongful removal since you're not dismissing her clients? How  
22 long do you want to respond to that?

23 MR. ANDERSEN: Ten days, Your Honor.

24 THE COURT: Ten days, okay. All right. The deadline  
25 for the filing of a compensation motion is May 15th at five



1 o'clock. The deadline for responding to the compensation  
2 motion is a little bit longer than the ten days because that  
3 hit a weekend, so it would be May 28th at five o'clock. The  
4 hearing on the compensation motion will be June 10th at 1:30 in  
5 the afternoon. Parties are required to attend the hearing in  
6 person. At that point, we will determine the appropriate  
7 amount of compensation, if any. Okay.

8 Yes, ma'am, go ahead.

9 MS. RICHARD: Your Honor, my name is Gwen Richard,  
10 and I represent Primary Residential Mortgage, Inc. I'm in the  
11 same position that Ms. Altsuler just described, and I would ask  
12 the Court for the same procedure and the same deadlines as  
13 well.

14 THE COURT: Any objection, Mr. Andersen and  
15 Ms. Thomas?

16 MS. THOMAS: No, Your Honor.

17 MR. ANDERSEN: No.

18 THE COURT: All right. We'll adopt the exact same  
19 thing.

20 MS. RICHARD: And, Your Honor, Ms. Thomas and I,  
21 there is a -- if the Court would indulge us, I don't know if  
22 now is the right time, but there is another adversary  
23 proceeding in this court that we have a deadline today to file  
24 a joint statement on. And it's a --

25 THE COURT: What is that --



1 MS. RICHARD: -- completely different adversary  
2 number, but due to some --

3 THE COURT: What is that adversary proceeding number?

4 MS. RICHARD: 22-3024. That case was removed by  
5 Ms. Thomas in 2022, and it was before -- it was after one of  
6 the anti-removal orders, but before the other two. And this  
7 Court -- before the removal in the case that we're here about  
8 right now, before the removal, the Court issued an order for us  
9 to file a joint statement by today. Due to some circumstances,  
10 if the Court will indulge us, we would like to bring to the  
11 Court's attention where there's a motion for withdrawal  
12 pending.

13 We're not going to be able to file a joint statement  
14 for everybody today, but I have presented a possible joint  
15 statement between myself and Ms. Thomas that we may be able to  
16 reach.

17 THE COURT: Ms. Thomas, how long do you all need to  
18 file your joint statement?

19 MS. THOMAS: If she'd let me hold her pen, I could  
20 just sign it right now.

21 THE COURT: Okay. So we no longer need the  
22 continuance? You're going to file the joint statement?

23 MS. RICHARD: That's correct, Your Honor.

24 THE COURT: Great.

25 MS. RICHARD: I did need the Court's guidance on how



1 to handle the other parties that are -- we haven't been able to  
2 file a joint statement as to all parties, as the Court  
3 ordered --

4 THE COURT: Well --

5 MS. RICHARD: -- because these other parties are  
6 not --

7 THE COURT: I'm not going to address the substance of  
8 anything --

9 MS. RICHARD: Okay.

10 THE COURT: -- that's before me today because it's --

11 MS. RICHARD: Sure.

12 THE COURT: -- not here. They don't have notice of  
13 it.

14 MS. RICHARD: Okay.

15 THE COURT: File what you file, and we'll deal with  
16 it when we deal with it.

17 Yes, sir?

18 MR. BERGER: Your Honor, may I be heard?

19 THE COURT: Yes, sir.

20 MR. BERGER: Your Honor, my name is John Berger. I  
21 represent a company that's really related to the underlying  
22 property that's involved in all these cases. My client is  
23 P.C.F. Properties in TX, LLC. My client purchased the  
24 underlying property at a foreclosure sale in March of 2020.

25 What the Court may not be aware of is that



1 Mr. Andersen and Ms. Thomas have engaged in other kinds of  
2 actions outside of this Court. They filed an involuntary  
3 bankruptcy in Delaware last year on a company that has been out  
4 of business for almost 30 years. They tried to use that  
5 proceeding to stay the trial court's ruling on my client's  
6 summary judgment.

7           The trial court in the 80th Judicial District Court  
8 of Harris County rightfully ignored the removal because it  
9 didn't apply and entered summary judgment in my client's favor,  
10 quieting title, to the property at 8202 Terra Valley Lane,  
11 which is really the underlying property that's governing and  
12 driving this entire ship.

13           In the course of the proceedings, they have filed,  
14 since April of last year, at least ten different lawsuits,  
15 again challenging title to the property, again asserting  
16 interests that people that are not in the chain of title have  
17 had in this property. Ms. Thomas and Mr. Andersen have been  
18 declared vexatious litigants by the 80th District Court of  
19 Harris County.

20           The Court has also issued numerous sanctions awards.  
21 The administrative court has sanctioned them for filing these  
22 frivolous motions to recuse the trial courts, which are  
23 typically filed either the day before or the morning of some  
24 kind of substantive hearing, either on summary judgment or  
25 trial setting. So what the Court may not be aware of is that

1 there's a whole industry of problems that they have caused  
2 relating to this Terra Valley property.

3 I take from Ms. Thomas' statement that she's not  
4 dismissing any of the other claims against other defendants  
5 that she may or may not have, is that she's going to continue  
6 fighting until she gets title to the Terra Valley property,  
7 even though it's clear from the real property record --

8 THE COURT: Does this have anything to do with the  
9 removed causes of action?

10 MR. BERGER: It does because the underlying --

11 THE COURT: But were they removed? Was your dispute  
12 with her removed?

13 MR. BERGER: Yes, it was.

14 MS. THOMAS: No.

15 THE COURT: Your dispute with her was removed?

16 MR. BERGER: Not in this case.

17 THE COURT: No, was it removed in this case to this  
18 Court?

19 MR. BERGER: No, it isn't.

20 THE COURT: Then I don't have any jurisdiction over  
21 what you're telling me. None.

22 MR. BERGER: I agree with that. I wanted to make  
23 that statement so the Court can understand what's been going  
24 on.

25 THE COURT: No, I'm not taking it. That's your

1 statement, it's not evidence, and it's not part of what is  
2 within my jurisdiction. I am not here as a cop. If she's  
3 doing something wrong, report it to people that have the  
4 correct authority over it. I've got no authority over what she  
5 might be doing there. I sent back to the state court the  
6 things that were removed, and I'm ordering compensation for  
7 people that were affected by that, but it sounds like your  
8 client was not affected by the removal. So deal with it  
9 somewhere else. I'm not taking it up.

10 MR. BERGER: Okay.

11 THE COURT: Anyone else? All right.

12 If the parties are unable, by the end of the day  
13 tomorrow, to reach an agreement on the form of the dismissal  
14 order, then we are returning here on Friday morning at 8 a.m.,  
15 and we're going to enforce the oral agreement that was  
16 announced on the record. We're not changing it, but we will  
17 then determine what's the proper order and require it to be  
18 signed at that point because I'll enforce this agreement.

19 So if you all don't reach an agreement, I am not  
20 trying to force you to sign something that is different than  
21 what got set on the record today. That's true for both of you.  
22 And you can come in at 8 in the morning. I'll then rewrite an  
23 order, and I'll look at the two things, and it may be that your  
24 form is good or your form is good, and I'll order that one to  
25 be used, or maybe I'll write my own. But we're not going to



1 leave this unresolved. So you only need to come in -- I want  
2 something to be filed by five o'clock tomorrow that tells me  
3 whether it has been signed. If it has not been signed, then we  
4 will -- I'm ordering you to reappear at 8 a.m. on Friday  
5 morning the 3rd. Okay.

6 Anything else we need to do today? All right. Thank  
7 you. We're in recess.

8 MR. HOLIDY: Thank you, Your Honor.

9 THE BAILIFF: All rise.

10 (Proceedings concluded at 8:34 a.m.)

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15 C E R T I F I C A T I O N

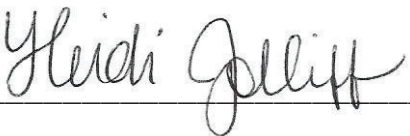
16

17 I, Heidi Jolliff, court-approved transcriber, hereby  
18 certify that the foregoing is a correct transcript from the  
19 official electronic sound recording of the proceedings in the  
20 above-entitled matter.

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HEIDI JOLLIFF, AAERT NO. 2850

DATE: MAY 10, 2024

25

ACCESS TRANSCRIPTS, LLC



**ENTERED**

April 16, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

PRIMARY RESIDENTIAL  
MORTGAGE INC. *et al*,

Plaintiffs,

v.

ELIZABETH THOMAS *et al*,

Defendants.

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Civil Action No. H-19-559

ORDER

Pending before the Court are Primary Residential Mortgage, Inc.’s and Meritage Homes of Texas, LLC’s Joint Motion to Remand and For Further Equitable Relief (Document No. 11), Stewart Title Company’s Joinder in Plaintiffs’ Joint Motion to Remand (Document No. 15), and MTH Lending Group L.P.’s Joinder in Plaintiffs’ Joint Motion to Remand (Document No. 20). Having considered the motions, submissions, and applicable law, the Court determines the motions should be granted.

I. BACKGROUND

This is a state anti-suit injunction case arising from a series of related state court disputes. Plaintiffs Primary Residential Mortgage Inc. (“PRMI”) and Meritage Homes of Texas LLC (“Meritage”) (collectively, “Plaintiffs”) filed this suit against Defendants Elizabeth Thomas (“E. Thomas”), James Allen (“Allen”), and Robert L.

Thomas (“R. Thomas”) (collectively, “Defendants”) to prevent them from improperly removing state court cases to federal court. This is the fifth removal of a related state court case involving at least one of the Defendants and the third removal of this anti-suit injunction case (the “Anti-Suit Case”).<sup>1</sup>

*A. First Removal*

On January 23, 2019, Defendants removed the Anti-Suit Case to the United States District Court for the Southern District of Texas (the “District Court”) on the basis of diversity jurisdiction (“First Removal”). On January 28, 2019, the District Court remanded the Anti-Suit Case back to the 127th Judicial District Court of Harris County, Texas.

*B. Second Removal*

On January 30, 2019, Defendants removed the Anti-Suit Case to the District Court on the basis of federal question jurisdiction (“Second Removal”). On February 19, 2019, the District Court remanded the Anti-Suit Case back to the 127th Judicial District Court of Harris County, Texas for lack of subject-matter jurisdiction and defects in the removal procedure.

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<sup>1</sup> The Anti-Suit Case is styled in state court as “Cause No. 2018-91506.” The other two related state court cases are “Cause No. 2017-82388” and “Cause No. 2017-76078” (collectively, “State Cases”).

### C. *The Pending Removal*

On February 19, 2019, Defendants removed the Anti-Suit to this Court on the basis of federal question jurisdiction. On February 22, 2019, Plaintiffs moved to remand the case back to the 127th Judicial District Court of Harris County, Texas.

## II. LAW & ANALYSIS

Plaintiffs move to remand the Anti-Suit Case back to state court, contending the Court lacks subject-matter jurisdiction. Plaintiffs also seek an award of attorneys' fees and an order enjoining Defendants from removing the State Cases without leave of court. The Court addresses each request in turn.

### A. *Remand*

“As a general rule, once a case is remanded to state court, a defendant is precluded from seeking a second removal *on the same ground*.” *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996) (emphasis in original). The District Court in the First and Second Removals found there was no federal subject-matter jurisdiction in the Anti-Suit Case. Defendants do not raise, nor does the Court find, a new factual basis for the Pending Removal based on any new facts or pleadings. The Court therefore finds it does not have subject-matter jurisdiction in this case and Defendants may not seek a third removal. Accordingly, Plaintiffs' motion to remand is granted.

*B. Attorneys' Fees*

Plaintiffs seek an award of attorneys' fees contending there was no reasonable basis for the Pending Removal. 28 U.S.C. § 1447(c) provides that "an order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." "Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). In deciding whether to grant such an award, the court "consider[s] the objective merits of removal at the time of removal, irrespective of the ultimate remand." *Diaz v. Cameron Cnty., Tex.*, 300 F. App'x 280, 281 (5th Cir. 2008) (quoting *Valdes v. Wal-Mart Stores, Inc.*, 199 F.3d 290, 291–92 (5th Cir. 2000)). The removing party bears the burden of proving a state court action is properly removable. *Frank v. Bear Stearns & Co.*, 128 F.3d 919, 921–22 (5th Cir. 1997).

Defendants cite federal question jurisdiction as the sole basis for removal to federal court in both the Second Removal and the Pending Removal. Defendants contend federal question jurisdiction exists on the basis of a purported federal defense to the Plaintiffs' state law claims. Defendants raised the same contention in the Second Removal. The District Court in the Second Removal remanded the Anti-Suit Case, finding that the District Court did not have federal question jurisdiction.

Defendants do not address the legal merits of whether they may seek another removal on the same factual and legal bases as the Second Removal. Defendants response to Plaintiffs' motion to remand rather addresses the two other related state court cases, Cause No. 2017-76078 and Cause No. 2017-83288, and alleges Defendants were "forced to removed [sic] this action to federal court" because the Anti-Suit Case is a "sham to perpetrate fraud upon federal court."<sup>2</sup> The Court further notes Defendants filed the Pending Removal on the same day the District Court remanded the Anti-Suit Case back to state court in the Second Removal. The Court therefore finds Defendants do not provide an objectively reasonable basis for the Pending Removal and therefore an award of attorneys' fees to Plaintiffs is appropriate.

PRMI submitted uncontested evidence that \$3,318.00 is a reasonable amount to be awarded as attorneys' fees in relation to the Pending Removal.<sup>3</sup> Therefore, based on the evidence provided by Plaintiffs and this Court's expertise and judgment, the Court finds that an award of \$3,318.00 in attorneys' fees is reasonable.

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<sup>2</sup> *Defendant's Objection and Response to Meritage Homes of Texas LLC., and Primary Residential Mortgage Inc. Reconsideration Remand Motion with a Motion to Dismiss*, Document No. 13 at 5.

<sup>3</sup> *Affidavit in Support of Motion to Remand and For Further Equitable Relief*, Document No. 18.

### C. Injunction

Plaintiffs request Defendants be enjoined from seeking any further removals of the State Cases without prior approval from the Chief Judge of the Southern District of Texas. District Courts are vested with broad discretion in determining whether to levy sanctions and what kind of sanctions are appropriate. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 404 (1990). Federal Rule of Civil Procedure 11 permits courts to sanction any attorney, represented party, or pro se litigant who signs a pleading without first conducting a reasonable inquiry into relevant facts and law. Fed. R. Civ. P. 11; *Bus. Guides, Inc. v. Chromatic Commc'ns Enters.*, 498 U.S. 533, 541–42 (1991). “Rule 11 prohibits filings made with any improper purpose, the offering of frivolous arguments, and the assertion of factual allegations without evidentiary support of the likely prospect of such support.” *L.F. v. Houston Indep. Sch. Dist.*, 2009 WL 3073926, at \*23 (S.D. Tex. Sept. 21, 2009) (Rosenthal, J.) (citations omitted). “This Court is authorized to enjoin future filings when necessary to deter vexatious filings which clog the judicial machinery with meritless litigation or are a flagrant abuse of the judicial process.” *Kaminetzky v. Frost Nat’l Bank*, 881 F. Supp. 276, 278 (S.D. Tex. 1995) (Hittner, J.).

This is the third removal of the Anti-Suit Case and the fifth removal of one of the State Cases, by one or more of the Defendants. Defendants sought subsequent removals of the State Cases with the knowledge that the State Cases had previously

been remanded back to state court by the District Court. Moreover, Defendants continue to represent to the Court that Cause No. 2017-76078 remains pending in the Court although Cause No. 2017-76078 has been remanded.<sup>4</sup> The Court therefore finds an injunction against further removals is appropriate to deter Defendants from continuing to seek subsequent, meritless removals. Defendants are thus enjoined from filing any notice of removal in the Anti-Suit Case, Cause No. 2017-76078, and Cause No. 2017-83288 without prior approval from the Chief Judge of the Southern District of Texas. *See K.F. v. Houston Indep. Sch. Dist.*, No. H-11-3834, 2013 WL 121131195, at \*9 (S.D. Tex. Feb. 26, 2013) (Hittner, J.) (imposing a pre-filing injunction on plaintiff who continued to file meritless suits); *Revels v. Thaler*, No. 7:12-CV-196-O-BL, 2012 WL 6062692, at \*1 (N.D. Tex. Dec. 6, 2012) (O'Connor, J.) (imposing a pre-filing junction on plaintiff for “persistence in filing frivolous lawsuits and abusing the judicial process”). Accordingly, Plaintiffs’ request for an injunction is granted.<sup>5</sup>

Accordingly, the Court hereby

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<sup>4</sup> The Court notes it entered an Order in federal case 4:18-cv-851, clarifying that Cause No. 2017-76078 is not pending in the Court. Moreover, all matters in federal case 4:18-cv-851 were previously remanded to the 333rd Judicial District Court of Harris County, Texas and is currently closed with no pending matters. *See* Civil Action No. 4:18-cv-851, *Order*, Document No. 79.

<sup>5</sup> Defendants also seek sanctions in the amount of \$3,500 from each Plaintiff. Having considered the request, submissions, and applicable law, Defendants’ request for sanctions is denied.

**ORDERS** that Primary Residential Mortgage, Inc.’s and Meritage Homes of Texas, LLC’s Joint Motion to Remand and For Further Equitable Relief (Document No. 11) is **GRANTED**. The Court further

**ORDERS** that Stewart Title Company’s Joinder in Plaintiffs’ Joint Motion to Remand (Document No. 15) is **GRANTED**. The Court further

**ORDERS** that MTH Lending Group L.P.’s Joinder in Plaintiffs’ Joint Motion to Remand (Document No. 20) is **GRANTED**.<sup>6</sup> The Court further

**ORDERS** that Plaintiffs Primary Residential Mortgage Inc. and Meritage Homes of Texas LLC shall recover attorneys’ fees in the amount of **\$3,318.00** from Defendants Elizabeth Thomas, James Allen, and Robert L. Thomas, jointly and severally, for which let execution issue.

**This case is hereby remanded to the 127th Judicial District Court of Harris County, Texas.**

The Court will issue a separate order of sanctions and preclusion.

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<sup>6</sup> The Court notes Stewart Title Company and MTH Lending Group, L.P. are not parties in the Pending Removal. On February 21, 2019, Defendants filed an amended notice of removal, purporting to remove Cause No. 2017-82388 and Cause No. 2017-76078 in this case. The Court notes Defendants did not properly remove Cause No. 2017-82388 or Cause No. 2017-76078 into the Pending Removal because *inter alia* the Defendants in the Pending Removal are not defendants in those cases. 28 U.S.C. § 1446; *McKenzie v. United States*, 678 F.2d 571, 574 (5th Cir. 1982) (“[O]nly a defendant, never a plaintiff, may remove a civil action from state to federal court.”).

SIGNED at Houston, Texas, on this 15 day of April, 2019.

A handwritten signature in black ink, appearing to read "David Hittner", written over a horizontal line.

DAVID HITTNER  
United States District Judge

**ENTERED**

April 16, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

PRIMARY RESIDENTIAL  
MORTGAGE INC. *et al*,

Plaintiffs,

v.

ELIZABETH THOMAS *et al*,

Defendants.

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Civil Action No. H-19-559

ORDER OF SANCTIONS AND PRECLUSION

In accordance with the Court's Order granting Primary Residential Mortgage, Inc.'s and Meritage Homes of Texas, LLC's Joint Motion to Remand and For Further Equitable Relief, the Court hereby

**ORDERS** that Defendants Elizabeth Thomas ("E. Thomas"), James Allen ("Allen"), and Robert L. Thomas ("R. Thomas") (collectively, "Defendants") are hereby **ENJOINED, collectively and individually**, from henceforth filing any notice of removal from the 127th Judicial District Court in Harris County, Texas in Cause No. 2018-91506, Cause No. 2017-76078, and Cause No. 2017-83288 (collectively, "State Cases") in the Southern District of Texas without advance written permission from the Chief Judge of the Southern District of Texas. Any new notices of removal from the State Cases which Defendants seek to file in this Court will not be docketed until the Chief Judge of the United States District Court for the

Southern District of Texas grants Defendants written leave to file; any new notice of removal of the State Cases which Defendants seek to file in this Court shall be accompanied by a Motion for Leave to File Notice of Removal. The Clerk of this Court shall forward such action and motion to the Chief Judge of the United States District Court for the Southern District of Texas for submission of the motion.

Failure of Defendants to comply with this Order or to continue to file any vexatious or frivolous notices of removal, complaints, motions, or actions raising similar issues addressed in the above-referenced Order may result in the imposition of monetary sanctions and/or an order of contempt of court.

SIGNED at Houston, Texas, on this 15 day of April, 2019.

A handwritten signature in black ink, appearing to read "David Hittner", is written over a horizontal line.

DAVID HITTNER  
United States District Judge

United States District Court  
Southern District of Texas**ENTERED**

February 16, 2022

Kathleen Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISIONROBERT THOMAS, *et al*,

Plaintiffs,

VS.

PCF PROPERTIES IN TEXAS, LLC, *et al*,

Defendants.

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CIVIL ACTION NO. 4:22-CV-705

**ORDER**

Before the Court are Defendant/Third-Party Plaintiff PCF Properties in Texas, LLC (“PCF”) and Third-Party Defendant JP Morgan Chase Bank, N.A.’s (“Chase”) Second Motion to Remand (Doc. #16); Responses from Plaintiff/Counter Defendant Allan Haye (Doc. #17), Third-Party Defendant Elizabeth Thomas (Doc. #28), and Plaintiff/Counter Defendant James Allen (Doc. #29); and a Reply from PCF and Chase (Doc. #34). Having reviewed the parties’ arguments and applicable legal authority, the Court grants the Motion to Remand.

In 2007, Third-Party Defendant Elizabeth Thomas (“E. Thomas”) obtained a residential mortgage loan to purchase real property located at 8202 Terra Valley in Tomball, Texas (the “Property”). Doc. #16 at 1. In 2010, the mortgage for the Property was assigned to Chase through a deed of trust. *Id.* at 1–2. For a decade, E. Thomas failed to make payments, so on March 3, 2020, Chase foreclosed on the mortgage. *Id.* at 2; Doc. #34 at 1. PCF purchased the Property at a foreclosure sale. Doc. #16 at 2. E. Thomas, and Plaintiff/Counter Defendants James Allen (“Allen”) (E. Thomas’ brother), Robert Thomas (“R. Thomas”) (E. Thomas’ son), and Allan Haye (“Haye”) (a straw buyer) (collectively, the “Aligned Litigants”) have repeatedly filed frivolous lawsuits and bankruptcies to prevent PCF from taking possession of the Property. *Id.* (listing

eleven lawsuits collectively filed by Allen, R. Thomas, and Haye); *id.*, Ex. 5 at 1 (U.S. Bankruptcy Judge Cecelia G. Morris noting that E. Thomas has filed at least six bankruptcies). Judges have found that the Aligned Litigants are working together to “delay and defraud [Chase] in its efforts to foreclose against the [Property].” Doc. #16, Ex. 5 at 2; *Id.*, Ex. 3 at 1 (U.S. Bankruptcy Judge Sean H. Lane finding that “the filing of [E. Thomas’] bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors”). In fact, on April 15, 2019, U.S. District Court Judge David Hittner enjoined E. Thomas, R. Thomas, and Allen from filing any notices of removal from the 127th Judicial District in Harris County for three pending cases without advance written permission from the Chief Judge of the Southern District of Texas. *Id.*, Ex. 1. In his order, Judge Hittner stated,

Failure of Defendants [E. Thomas, R. Thomas, and Allen] to comply with this Order or to continue to file any vexatious or frivolous notices of removal, complaints, motions, or actions raising similar issues addressed in the above-referenced Order may result in the imposition of monetary sanctions and/or an order of contempt of court.

*Id.*

Yet, despite Judge Hittner’s admonishments, the Aligned Litigants have continued their tactics. On June 15, 2020, Allen, as an alleged owner of the Property, sued PCF in the 80th Judicial District of Harris County for quiet title and declaratory judgment regarding ownership of the Property. Doc. #2, Ex. 10 ¶ 2. Haye and R. Thomas were later joined as Plaintiffs, and in February 2021, the plaintiffs filed their Eighth Joint Amended Petition with claims against E. Thomas. *Id.* ¶¶ 4–5, 9. On March 7, 2022, E. Thomas removed the case to this Court claiming that under 28 U.S.C. § 1452 (“Section 1452), the Court has jurisdiction to transfer the case to the U.S. Bankruptcy Court for the Southern District of New York, White Plains Division, where she has a pending Chapter 13 bankruptcy case. Doc. #4 at 17 (Amended Notice of Removal).

PCF and Chase argue that the case must be remanded because this Court lacks jurisdiction

under Section 1452. Doc. #16 at 6. Section 1452 allows a party to “remove any claim or cause of action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). Section 1334(b) of 28 U.S.C. gives district courts “original but not exclusive jurisdiction of all civil proceedings arising under [T]itle 11, or arising in *or related to a case under [T]itle 11.*” 28 U.S.C. § 1334(b) (emphasis added). A matter is related to a Title 11 case when “the outcome of that proceeding could *conceivably* have any effect on the estate being administered in bankruptcy.” *In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987).

E. Thomas argues that this case “is directly related” to her bankruptcy case within the meaning of Section 1334 because the relief sought by PCF and Chase is the same as claims already litigated against her. Doc. #4 at 17. However, United States Bankruptcy Judge Cecelia G. Morris of the Southern District of New York, who presided over E. Thomas’ aforementioned Chapter 13 case, stated in a memorandum decision that the Property “is not (and has never been) property of the [bankruptcy] estate.” Doc. #16, Ex. 5 at 11. Even further, Judge Morris stated, “The validity of the March 3, 2020 foreclosure sale on the . . . Property is not invalidated or affected in any way whatsoever by this bankruptcy case.” *Id.*, Ex. 5 at 12. Because the Property is not a part of the bankruptcy estate, the case is not related to a title 11 proceeding; the outcome of this case as it relates to the Property will not impact the estate being administered in E. Thomas’ bankruptcy proceeding. *In re Zale Corp.*, 62 F.3d 746, 753 (5th Cir. 1995) (“[A] third-party action does not create ‘related to’ jurisdiction when the asset in question is not property of the estate and the dispute has no effect on the estate.”). Therefore, the Court lacks jurisdiction under Section 1334(b) as required for a removal pursuant to Section 1452.

For the foregoing reasons, the Motion to Remand is hereby GRANTED, and this case is

REMANDED to the 80th Judicial District Court, Harris County, Texas for further proceedings. This Court also expands Judge Hittner's previous directive that the Aligned Litigants receive advance written notice from the Chief Judge of the Southern District of Texas before filing notices of removal to include any and all removals from any Harris County District Court. Moreover, as noted by Judge Hittner, continued frivolous notices of removal, complaints, and motions by the Aligned Litigants will result in the imposition of monetary sanctions and/or an order of contempt from this Court.

It is so ORDERED.

FEB 16 2023

Date

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The Honorable Alfred H. Bennett  
United States District Judge

**ENTERED**

March 30, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MTH LENDING GROUP LP, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:22-CV-742
	§	
ALVIN R. MULLEN II, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**MEMORANDUM OPINION AND ORDER REMANDING CASE**

Before the Court are a motion for a preliminary injunction and a “motion to enforce remand order” filed by Defendant Alvin R. Mullen II (“Mullen”). (Dkt. 17; Dkt. 18).<sup>1</sup> The Court has carefully considered the full record in this case, including the dockets of the numerous related proceedings. Both of Mullen’s motions are **DENIED AS MOOT**. The Court *sua sponte* **REMANDS** this case to the 333rd Judicial District Court of Harris County, Texas under 28 U.S.C. § 1452(b).<sup>2</sup>

Furthermore, this lawsuit, which was filed in Texas state court over five years ago, has been removed from Texas state court at least five times—four times to this Court and once to the United States Bankruptcy Court for the District of Columbia. *See* Southern District of Texas case numbers 4:19-CV-323, 4:19-CV-559, and 4:19-CV-2486 and District of Columbia bankruptcy case number 18-10020. Accordingly, the Court will

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<sup>1</sup> The Court, out of necessity, cites to the dockets of several other cases in this opinion. Docket citations that are enclosed in parentheses and prefaced with the abbreviation “Dkt.” are citations to the docket of this case, Southern District of Texas case number 4:22-CV-742.

<sup>2</sup> The state-court cause number is 2017-76078.

broaden the preclusion order entered by Judge Hittner after one of the prior removals to include all parties and not just Elizabeth Thomas, James Allen, and Robert L. Thomas. *See* Southern District of Texas case number 4:19-CV-559 at docket entry 37. Once this case returns to Texas state court, **no party may remove it to this Court without advance written permission from the Chief Judge of the Southern District of Texas.** Any attempt to remove this case without obtaining the required permission as set forth in Judge Hittner’s order may result in monetary sanctions and/or an order of contempt of court for both the removing party and its counsel.

### **BACKGROUND**

This case is one strand in a complex web of protracted civil lawsuits and bankruptcy proceedings that Mullen, Elizabeth Thomas, James Allen, Robert L. Thomas, and several other associated parties (“the Mullen parties”) have crafted to effectuate, in the words of the United States Bankruptcy Court for the Southern District of New York, “a scheme to delay, hinder, and defraud creditors” through “a long-running systemic plan . . . to prevent a piece of property located at 8202 Terra Valley Lane, Tomball, Texas . . . from being foreclosed.” *See* Southern District of New York bankruptcy case number 18-23676 at docket entry 158. Judges of this Court share the New York bankruptcy court’s astute view of these cases. In a related bankruptcy appeal, Judge Hughes referred to the Mullen parties’ actions as “a ten year campaign of lawsuits and bankruptcies—over 15 have been filed—to avoid foreclosure” through “frivolous litigation” and the recording of “questionable or invalid documents in the real property records . . . including a purported satisfaction and

release of the lien.” *See* Southern District of Texas case number 4:19-CV-4321 at docket entry 23.

One of the Mullen parties’ favored tactics is the filing of dilatory notices of removal. In an attempt to help quell the Mullen parties’ obstructive removals, Judge Hittner entered a preclusion order after remanding the second removal of this case. Judge Hittner’s order requires Elizabeth Thomas, James Allen, and Robert L. Thomas to obtain advance written permission from the Chief Judge of the Southern District of Texas before removing this case. *See* Southern District of Texas case number 4:19-CV-559 at docket entry 37.<sup>3</sup> However, the Mullen parties have now twice circumvented Judge Hittner’s order by having Mullen (along with, in one instance, other non-enjoined Mullen parties) file the notice of removal. On the first such occasion, Judge Eskridge remanded the case to state court on account of procedural defects in the notice of removal and failure to pay the filing fee. *See* Southern District of Texas case number 4:19-CV-2486 at docket entry 60.

The second such occasion is this removal. Mullen has removed the case to this Court under the bankruptcy removal statute, 28 U.S.C. § 1452 (“Section 1452”). (Dkt. 1 at pp. 16–18). The bankruptcy proceeding to which this case purportedly relates is a bankruptcy petition filed by Elizabeth Thomas in the United States Bankruptcy Court for the Southern District of New York. *See* Southern District of New York bankruptcy case number 18-

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<sup>3</sup> Judge Hittner’s order also lists two related state-court cases, case number 2018-91506 and case number 2017-83288, as subject to the injunction on removal. *See* Southern District of Texas case number 4:19-CV-559 at docket entry 37. Those two cases were consolidated with this case by the state-court judge prior to the removal that precipitated Judge Hittner’s order. *See* case number 2017-76078 in the 333rd Judicial District Court of Harris County, Texas, order of consolidation dated January 30, 2019.

23676. The judges presiding over the bankruptcy have explicitly “determined that the filing of [Elizabeth Thomas’s] bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors” through “a long-running systemic plan . . . to prevent a piece of property located at 8202 Terra Valley Lane, Tomball, Texas . . . from being foreclosed.” *See* Southern District of New York bankruptcy case number 18-23676 at docket entries 80 and 158.

### **LEGAL STANDARD**

Mullen has removed this lawsuit to this Court under Section 1452. (Dkt. 1 at pp. 16–18). With irrelevant exceptions,<sup>4</sup> Section 1452 states that “[a] party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under [28 U.S.C. § 1334].” 28 U.S.C. § 1452(a). In turn, 28 U.S.C. § 1334 grants jurisdiction to district courts and adjunct bankruptcy courts in proceedings that are “related to” a bankruptcy. *In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999). A proceeding is “related to” a bankruptcy “if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Id.* (quotation marks omitted).

However, even if a claim or cause of action is properly removed to a district court under Section 1452, the district court “may remand such claim or cause of action on any equitable ground.” 28 U.S.C. § 1452(b). The district court “has broad discretion to grant or deny a motion to remand a removed claim on any equitable ground, including: (1) forum

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<sup>4</sup> Section 1452 does not allow the removal of proceedings before the United States Tax Court or of civil actions by governmental units to enforce those units’ police or regulatory powers.

non conveniens; (2) a holding that, if the civil action has been bifurcated by removal, the entire action should be tried in the same court; (3) a holding that a state court is better able to respond to questions involving state law; (4) expertise of the particular court; (5) duplicative and uneconomic effort of judicial resources in two forums; (6) prejudice to the involuntarily removed parties; (7) comity considerations; and (8) a lessened possibility of an inconsistent result.” *Browning v. Navarro*, 743 F.2d 1069, 1076 n.21 (5th Cir. 1984) (citations omitted). Since *Browning*, “[c]ourts in the Southern District of Texas have considered additional factors in the evaluation of equitable remand, including the presence of non-debtor parties; the degree of relatedness or remoteness to the main bankruptcy case; whether the case involves forum shopping; and the burden on the bankruptcy court’s docket.” *GITP Properties I, LTD v. Mattress Pal Holding, LLC*, No. 4:19-CV-1947, 2019 WL 4889603, at \*2 (S.D. Tex. Sept. 16, 2019), *adopted*, 2019 WL 4888174 (S.D. Tex. Oct. 2, 2019) (collecting cases). The district court’s exercise of discretion under Section 1452(b) is not subject to appellate review, *id.*, and the district court may remand a case under Section 1452(b) *sua sponte*. *In re Ciclon Negro, Inc.*, 260 B.R. 832, 837 (Bankr. S.D. Tex. 2001).

### ANALYSIS

The Court finds no shortage of equitable grounds on which to remand this case. This lawsuit, which was filed in Texas state court over five years ago, has been removed from Texas state court at least four times to this Court and once to the United States Bankruptcy Court for the District of Columbia. Two of those removals, including this one, were in violation of the spirit, though perhaps not the letter, of a preclusion order previously entered

by Judge Hittner. The bankruptcy filing to which this case supposedly relates has been denounced by the bankruptcy court presiding over it as “part of a scheme to delay, hinder, and defraud creditors.” This removal was plainly an obstruction tactic.

Needless to say, the Court finds sufficient equitable grounds for a remand under Section 1452. However, the Court must highlight a misrepresentation that the Mullen parties have made both to this Court and to the New York bankruptcy court about whether this case was “removed into” a different case that was pending before Judge Hittner five years ago. Although it is unclear why, apart from a general desire to create confusion, the Mullen parties continue to misrepresent this specific piece of the history of this case, it is abundantly clear that the Court must leave no room for interpretation on this point.

In 2018, one of the Mullen parties, Elizabeth Thomas, removed a different case, Texas state court case number 2016-87941, to the Southern District of Texas, where it was given Southern District of Texas case number 4:18-CV-851 and assigned to Judge Hittner. Judge Hittner remanded the case to state court on the opposing party’s motion and ordered Elizabeth Thomas to pay the movant’s attorney’s fees. *See* Southern District of Texas case number 4:18-CV-851 at docket entry 44. Before the removal, case number 2016-87941 had been consolidated with case number 2017-04089, a fact that Judge Hittner noted in his remand order. *See* case number 2016-87941 in the 333rd Judicial District Court of Harris County, Texas, order of consolidation dated May 16, 2017; Southern District of Texas case number 4:18-CV-851 at docket entry 44. Judge Hittner’s remand order made no mention of this case (state-court case number 2017-76078), however, as this case had not (and never has) been consolidated with case number 2016-87941. *See* Southern District of Texas case

number 4:18-CV-851 at docket entry 44. To boil it down: this case was never part of Southern District of Texas case number 4:18-CV-851.

Nevertheless, the Mullen parties, for whatever reason, have represented to this Court and to the United States Bankruptcy Court for the Southern District of New York that this case was somehow “removed into” Southern District of Texas case number 4:18-CV-851 before Judge Hittner entered his remand order. (Dkt. 21 at p. 2). *See* Southern District of New York bankruptcy case number 18-23676 at docket entry 137. This is legally impossible. “As a procedural matter, a litigant may not properly remove a state court case ‘into’ an existing federal case as [the Mullen parties apparently] attempted to do [before Judge Hittner]. Instead, the litigant must comply with the procedures of the removal statutes and pursue consolidation thereafter.” *Alcoser v. Ford*, No. 21-50626, 2022 WL 4078564, at \*2 (5th Cir. Sept. 6, 2022) (footnote omitted); *see also Gilliam v. Austin*, No. C-02-1389, 2002 WL 1034115, at \*4 (N.D. Cal. May 13, 2002) (“[T]he notice of removal is the means of removing a case from state court to federal district court, where it is viewed as a ‘new’ case and is assigned a ‘new’ case number[.] A case cannot be removed from state court to become part of an already existing federal case.”). The Mullen parties did not comply with the required procedures, so, again, this case was never part of Southern District of Texas case number 4:18-CV-851.

For all the reasons discussed above, the Court will remand this case to Texas state court under 28 U.S.C. § 1452(b). The Court will also broaden the preclusion order entered by Judge Hittner in Southern District of Texas case number 4:19-CV-559 to include all

parties and not just Elizabeth Thomas, James Allen, and Robert L. Thomas. *See* Southern District of Texas case number 4:19-CV-559 at docket entry 37.

### CONCLUSION

The motion for a preliminary injunction and “motion to enforce remand order” filed by Defendant Alvin R. Mullen II (Dkt. 17; Dkt. 18) are **DENIED AS MOOT**, as are any other pending motions. The Court sua sponte **REMANDS** this case to the 333rd Judicial District Court of Harris County, Texas under 28 U.S.C. § 1452(b).<sup>5</sup>

Once this case returns to Texas state court, **no party may remove it to this Court without advance written permission from the Chief Judge of the Southern District of Texas**. Any attempt by any party to remove this case without obtaining the required permission as set forth in the preclusion order entered by Judge Hittner in Southern District of Texas case number 4:19-CV-559<sup>6</sup> may result in monetary sanctions and/or an order of contempt of court for both the removing party and its counsel.

The Clerk is directed to provide a copy of this order to the parties. The Clerk is further directed to send a certified copy of this order via certified mail, return receipt requested, to the District Clerk of Harris County, Texas and the Clerk of the 333rd Judicial District Court of Harris County, Texas.

SIGNED at Houston, Texas on March 30, 2023.

  
 GEORGE C. HANKS, JR.  
 UNITED STATES DISTRICT JUDGE

<sup>5</sup> The state-court cause number is 2017-76078.

<sup>6</sup> The Court has attached Judge Hittner’s order to this opinion.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas

**ENTERED**

April 16, 2019

David J. Bradley, Clerk

PRIMARY RESIDENTIAL  
MORTGAGE INC. *et al*,

Plaintiffs,

v.

ELIZABETH THOMAS *et al*,

Defendants.

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Civil Action No. H-19-559

ORDER OF SANCTIONS AND PRECLUSION

In accordance with the Court's Order granting Primary Residential Mortgage, Inc.'s and Meritage Homes of Texas, LLC's Joint Motion to Remand and For Further Equitable Relief, the Court hereby

**ORDERS** that Defendants Elizabeth Thomas ("E. Thomas"), James Allen ("Allen"), and Robert L. Thomas ("R. Thomas") (collectively, "Defendants") are hereby **ENJOINED, collectively and individually**, from henceforth filing any notice of removal from the 127th Judicial District Court in Harris County, Texas in Cause No. 2018-91506, Cause No. 2017-76078, and Cause No. 2017-83288 (collectively, "State Cases") in the Southern District of Texas without advance written permission from the Chief Judge of the Southern District of Texas. Any new notices of removal from the State Cases which Defendants seek to file in this Court will not be docketed until the Chief Judge of the United States District Court for the

Southern District of Texas grants Defendants written leave to file; any new notice of removal of the State Cases which Defendants seek to file in this Court shall be accompanied by a Motion for Leave to File Notice of Removal. The Clerk of this Court shall forward such action and motion to the Chief Judge of the United States District Court for the Southern District of Texas for submission of the motion.

Failure of Defendants to comply with this Order or to continue to file any vexatious or frivolous notices of removal, complaints, motions, or actions raising similar issues addressed in the above-referenced Order may result in the imposition of monetary sanctions and/or an order of contempt of court.

SIGNED at Houston, Texas, on this 15 day of April, 2019.

  
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DAVID HITTNER  
United States District Judge

No.2018-14171

THOMAS, ROBERT L. JAMES ALLEN  
PLAINTIFF§  
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IN THE DISTRICT COURT OF

vs.

133<sup>RD</sup> JUDICIAL DISTRICTMcCARTHY & HOLTHUS LLP., ON  
BEHALF OF FLAGSTONE LENDING GROUP  
A NON-EXISTENT A UTAH CORPORATION,  
AND SUCCESSOR/ASSIGNEE  
J.P. MORGAN CHASE BANK N.A and  
ELIZABETH THOMAS  
Defendants

HARRIS COUNTY, TEXAS

## SPECIAL APPEARANCE TO FILE NOTICE REMOVAL

PLEASE TAKE NOTICE THAT, that on February 1, 2022, Debtor Elizabeth Thomas makes a special appearance for the sole purpose of filing this Notice of Removal, pursuant to 28 U.S.C. § 1332 1441 and 1446, removing the case entitled **Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas** under cause No. 2018-14171, from the 333<sup>rd</sup> Harris County District Court to the United States Bankruptcy Court of the Southern District of Texas; Houston Division. This court shall proceed no further in this action unless and until the case is remanded pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Removal is attached hereto as **Exhibit 1**.

Respectfully submitted,

By/s/Elizabeth ThomasElizabeth Thomas  
712 H St. NE Suite 1297  
Washington DC., 20002

(832) 216-8623  
elizthomas234@gmail.com

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been furnished to counsel of record in accordance with the Texas Rules of Civil Procedure, this 1<sup>st</sup> day of February 2022.

By/s/Elizabeth Thomas

Unofficial Copy Office of Marilyn Burgess District Clerk

**Automated Certificate of eService**

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Gwen Richard		richard@mckinneytaylor.com	2/1/2022 12:13:30 PM	SENT

**IN THE UNITED STATES FEDERAL DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

THOMAS, ROBERT L. JAMES ALLEN  
PLAINTIFF

CIVIL NO. \_\_\_\_\_

VS.

(FORMERLY 133<sup>RD</sup> DISTRICT COURT  
HARRIS COUNTY, TEXAS CASE  
NO. 2018-14171)

McCARTHY & HOLTHUS LLP., ON  
BEHALF OF FLAGSTONE LENDING GROUP  
A NON-EXISTENT A UTAH CORPORATION,  
AND SUCCESSOR/ASSIGNEE  
J.P. MORGAN CHASE BANK N.A and  
ELIZABETH THOMAS

Defendants

PRIMARY RESIDENTIAL MORTGAGE INC.  
Interventor

VS.

ELIZABETH THOMAS

Defendant

---

**NOTICE OF REMOVAL**

Elizabeth Thomas, a debtor in the United States Bankruptcy Court for the Southern District of New York: White Plains Division under case No. 18-23676" files this Notice of Removal as follows:

**I. Background**

1. On October 29, 2018, (the "Petition Date"), the Debtor Elizabeth Thomas, filed her voluntary petition for relief under Chapter 13 of Title 11 of the United States Code, 11 U.S.C. §§ 101et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court of the Southern District of New York commencing the above

referenced bankruptcy case which bears Case No. 18-23676.

2. On January 3, 2019, J.P. Morgan Chase Bank N.A., filed a proof of claim alleging to be a secured creditor and that debtor Thomas was in defaulted on her money purchase loan from Flagstone Lending Group a Utah Corporation and owned the outstanding amount of \$489, 069.96, in mortgage payments that is a secured claim encumbering the property located at 8202 Terra Valley Lane, Tomball Tx 77375.

3. On January 24, 2019, Debtor Elizabeth Thomas, *pro se* filed Notice of Removal [Doc.28], invoking 28 U.S.C. § 1452(a), Fed. R. Bankr. P. 9027, and removed the case styled as *Miramar Lake Homeowners Association et al vs. Elizabeth Thomas et al*, (the “851 Cases”) from the 333<sup>rd</sup> Judicial District Court, Harris County Texas, to the United States Southern District Court of New York: White Plains Division into case number 18-23676, for the purpose of litigation with among others CHASE.

4. On January 13, 2020, debtor Thomas filed a “***Motion to Expunge, Reduce or Reclassify J.P. Morgan Chase Bank N.A., Proof of Claim No. 5.***” Thomas pleaded that the “Debtor borrowed approximately \$235, 262. 37 from her lender MTH Lending Group on October 19, 2007, bearing an interest rate of 6.375% (the “Loan and Mortgage”) for the refinance of the residential property located at 8202 Terra Valley Lane, Tomball Tx., (the Property).

5. Debtor Thomas pled that she had subsequently sold the Property to a third party and no longer owns the property. Accordingly, the Loan and Mortgage are no longer secured as to the Debtor, as the Debtor does not own the property. Accordingly, the claim should be reclassified as unsecured. As an unsecured debt, this claim should be expunged

as the Debtor received a **discharged** in a Chapter 7 bankruptcy in 2011 and listed the debt to this mortgage.<sup>2</sup>

6. **The Debtor Thomas Motion Requested Relief:** that the Court issue an Order reclassifying CHASE claim as unsecured and expunging it as the mortgage debt was **previously discharged in a prior bankruptcy in the year of 2011.**

7. In other words more simply Debtor Thomas challenged that she **never** applied for or received a **money purchase loan** on October 19, 2007, from a Utah Corporation lender Flagstone Lending Group who is in fact non-existent, and **instead** on October 19, 2007, she attended a closing on October 19, 2007, with family members at MTH Title Company L.C., and closed on a Texas Home Equity Loan from MTH Lending Group L.P, at f/k/a MTH Title Company L.C.

8. Before the Honorable Judge Sean H. Lane of the United States Bankruptcy Court for the Southern District of New York White Plains Division, was the task of determining whether debtor Thomas, on October 19, 2007, obtained a money purchase loan in the amount of \$239,400.00, from a Utah Corporation lender Flagstone Lending Group or a Texas Home Equity Loan from MTH Lending Group L.P.

9. Stewart Title Company whom owned a controlling 51% interest in f/k/a MTH Title Company L.C., where Debtor Thomas closed on October 19, 2007, Texas Home Equity Loan responses to "First Set of Admissions" confirmed that on October 19, 2007, Debtor Thomas, closed on a Texas Home Equity Loan from her lender MTH Lending Group L.P., and **DENY** (i) receiving any cash funds for a Utah Corporation lender named Flagstone Lending Group on October 19, 2007, to fund Thomas with a loan(ii) **deny** executing any

closing loan documents between Debtor Thomas and Flagstone Lending Group; and (iii) deny recording any “deed of trust” in the Harris County Real Property Records securing said non-funded loan.

10. On February 5, 2020, JP Morgan Chase Bank N.A., filed an “Objection” to Debtor Thomas “Motion to Expunge, Reduce or Reclassify its Proof of Claim.” Instead of CHASE coming forward with evidence to “prove” (i) the existence of Utah Corporation lender Flagstone Lending Group, (ii) evidence the existence of a funded money purchase transaction transpired between Flagstone and Debtor Thomas, on October 19, 2007, and (iii) if so at what title company did this closing of this alleged loan take place. Instead submitting said proof JP Morgan Chase goes on a charade of arguments that Debtor Thomas, her son Robert Thomas and James Allen are all part of a scheme to defraud Chase of payment for this phantom advance cash purchase was (i) fraudulently release by Andersen and; (ii) deeds transferring the interest in the property are fraudulent these issues are reference and reproduces below:

*“In addition, the Debtor has filed a false satisfaction of Chase’s Loan (the “Purported Satisfaction”), in which James M. Andersen (“Andersen”), an attorney who had represented the Debtor in numerous actions, purported to act as a “substitute trustee” for Chase.” And the deeds transferring an interest property were also fraudulent and without consideration.*

11. On or about June 17, 2020, Judge Sean H. Lane U.S.B.J., signed order granting debtor Thomas Motion to “Reclassify Chase claim as unsecured and Expunge” J.P. Morgan Chase Bank N.A Claim No. 5, as it was discharged in a 2011 bankruptcy. Debtor Thomas 2011 discharge injunction order automatically voids any judgment obtained on a discharged debt. 11 U.S.C. § 524(a)(1)..

12. On December 29, 2020, Judge Sean H. Lane U.S.B.J., signed a confirmation order confirming Debtor Thomas Chapter 13 plan.

13. On January 31, 2022, debtor Thomas discovered through social media and a Fox News Reporter that entity named *Primary Residential Mortgage Inc.*, has filed an appeal in the 133rd Judicial District Court Harris County, Texas, in the case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas* under cause No. 2018-14171, challenging and appealing Judge Sean H. Lane U.S.B.J., order granting debtor Thomas Motion to “**Reclassify** Chase claim as unsecured **and Expunge**” J.P. Morgan Chase Bank N.A Claim **No. 5**, as it was discharged in a 2011 bankruptcy, although they have no interest in this case.

14. On January 31, 2022, debtor Thomas discovered that although she was dismissed from this case on February 14, 2019, and prohibited from making filings into said court the 133rd Judicial District Court held a hearing without notice or service of summons and complaint on debtor Thomas. *Primary Residential Mortgage Inc.*, seeks to **re-litigate** CHASE same causes of action/claims that have already litigated and disposed of in the bankruptcy court and is protected by the bankruptcy automatic stay.

## II. **Removal under 28 U.S.C. §1452**

15. The 133rd Judicial District Court, Harris County, Texas case may be removed to pursuant to 28 U.S.C. §1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a

governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

16. Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has original jurisdiction over all civil proceedings "arising under title, or arising in or related to cases under Title 11." 28 U.S.C. § 1334(b).

17. The 133rd Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas* under cause No. 2018-14171, is directly related to the Debtor's Thomas Bankruptcy Case within the meaning of 28 U.S.C. § 1334 because the claims for relief asserted by the *Primary Residential Mortgage Inc.*, are the same exact claims asserted and litigated against the debtor in the bankruptcy court (the Contested Matter"), More importantly litigating the same claims again outside of the bankruptcy court would interfere with the Debtor fresh start under the Bankruptcy Code.

18. Additionally a bankruptcy court's confirmation order that is final and no longer subject to appeal [is] 'res judicata to the parties and those in privity with them.'" See: *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152, 129 S. Ct. 2195, 2205 (2009)). It become "res judicata to the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." I.d., 557 U.S. 137, 152, 129

S. Ct. 2195, 2205 (2009).

19. A “confirmation order has a preclusive effect, foreclosing relitigation of any issue litigated by the parties and or any issue necessarily determined by the confirmation order.” *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, at 1692 (quoting 8 *Collier on Bankruptcy* ¶ 1327.02[1][c], at 1327–26; *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 275 (2010)). The orders confirming a plan precludes re-litigation of confirmation “objections” raised “or those that could have been raised before confirmation.” The application of *res judicata* produces finality for the parties and promotes judicial economy. Parties know that when final judgment is entered and all appeals are exhausted, the case is over and the decision will be binding on all issues determined in the lawsuit or proceeding. *Id.*

20. The 133rd Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas* under cause No. 2018-14171, is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

21. Based on the foregoing, the 133rd Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas* under cause No. 2018-14171 may be removed to the U.S. Bankruptcy Court for the Southern District of New York pursuant to 28 U.S.C. § 1452.

22.. Upon removal, of the case entitled the *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its*

Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas under cause No. 2018-14171, the proceeding is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (o), and a contested matter.

23. The United States Bankruptcy Court for the Southern District of New York White Plains Division is the proper court in which to remove this action pursuant to 28 U.S.C. § 1452 and FRBP 9027, and the bankruptcy court has nationwide jurisdiction over parties within the United States.

24. *Primary Residential Mortgage Inc.*, are located within the United States.

25. Moreover *Primary Residential Mortgage Inc.*, and Debtor Thomas are diverse.

26. Written notice of the filing of this Notice of Removal and a copy of this Notice of Removal is being served upon *Primary Residential Mortgage Inc* and will be filed with the 133<sup>rd</sup> Harris County District Clerk copies of the petition shall be filed within fourteen (14) days.

### III. ADOPTION AND RESERVATION OF DEFENSES

27. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) arguments that venue is improper; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available.

**WHEREFORE**, the Debtor Elizabeth Thomas hereby removes the case entitled the *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas* under cause No. 2018-14171, to the U.S. Federal District Court for the Southern District of Texas; Houston Division for transfer to the U.S. Federal District Court for the Southern District of New York; White Plains Division for transfer to United States Bankruptcy Court for the Southern District of New York; White Plains Division pursuant to 28 U.S.C. §1452 and FRBP.

Respectfully submitted,

/s/Elizabeth Thomas

Elizabeth Thomas Self Represented

712 H Street NE #1297

Washington D.C. 20002

elizthomas234@gmail.com

### **CERTIFICATE OF SERVICE**

This is to certify that the foregoing NOTICE OF REMOVAL WAS SENT Via United States Post Office mail on the 1<sup>st</sup> day of February 2022, postage prepaid thereon to:

**McKINNEY TAYLOR P.C.**

Three Riverway, Suite 900

Houston, Texas 77056

Attorney for *Primary Residential Mortgage Inc.*,

/s/Elizabeth Thomas

**ENTERED**

February 09, 2022

Nathan Ochsner, Clerk

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
THOMAS, ROBERT L. JAMES ALLEN	§	CASE NO: 18-23676 <sup>1</sup>
Debtor(s)	§	
	§	CHAPTER 13
	§	
THOMAS, ROBERT L. JAMES ALLEN	§	
Plaintiff(s)	§	
	§	
VS.	§	ADVERSARY NO. 22-03021
	§	
MCCARTHY & HOLTHUS LLP, ON	§	
BEHALF OF FLAGSTONE LENDING	§	
GROUP A NON-EXISTENT UTAH	§	
CORPORATION AND	§	
SUCCESSOR/ASSIGNEE J.P. MORGAN	§	
CHASE BANK N.A. AND ELIZABETH	§	
THOMAS	§	
Defendant(s)	§	
	§	
PRIMARY RESIDENTIAL MORTGAGE	§	
INC.	§	
Intervenor	§	

**ORDER DISMISSING AND REMANDING CASE**

The pro se defendant, Elizabeth Thomas, has removed a state court suit which originated in the 133<sup>rd</sup> Judicial District Court of Harris County Texas to federal court.<sup>2</sup> She alleges that a ruling from the bankruptcy judge in a removed case from the 333<sup>rd</sup> Judicial County of Harris County Texas is dispositive for this case as well. Ms. Thomas has been litigating these matters for a number of years in the Harris County state court as well as the federal courts of both the Southern District of Texas and the Southern District of New York. Accordingly, some background facts regarding the previous litigation are noted.

**BACKGROUND FACTS****Harris County State Court Suit in 333<sup>rd</sup> Judicial District Court**

<sup>1</sup> Case No. 18-23676 is filed in the Southern District of New York

<sup>2</sup> Cause No. 2018-1417, *Thomas Robert and James Allen v. McCarthy & Holthus LLP, on Behalf of Flagstone Lending Group, a Non-Existent Utah Corp. and successor/assignee, J.P. Morgan Chase Bank, N.A; and Elizabeth Thomas*, in the 133<sup>rd</sup> Judicial District Court, Harris County, Texas.

Ms. Thomas removed this suit, along with an affiliated state court suit<sup>3</sup> (the “Consolidated Suit”), on February 22, 2018 to the Southern District of Texas. On March 8, 2018, the district court remanded the Consolidated Suit to the 333<sup>rd</sup> Judicial Court. Ms. Thomas again removed the Consolidated Suit on March 18, 2018 to the District Court for the Southern District of Texas under case no. 18-CV-00851. On June 25, 2018, Judge Hittner again remanded the entire Consolidated Suit to the 333<sup>rd</sup> and closed the case. Ms. Thomas states in the current notice of removal that she then filed for bankruptcy in the Southern District of New York on October 29, 2018 in case No. 18-23676, and again removed the Consolidated Case from Harris County<sup>4</sup> to the Southern District of New York bankruptcy court. The New York bankruptcy court remanded all Harris County suits back to the 333<sup>rd</sup> Judicial District Court on January 13, 2022.<sup>5</sup>

### **Harris County State Court Suit in 133<sup>rd</sup> Judicial District Court**

Ms. Thomas had filed a Suggestion of Bankruptcy in this case on September 7, 2018, stating that she had filed for bankruptcy in the United States Bankruptcy Court in the District of Columbia under case no. 18-00598. That case was dismissed on October 19, 2018 for failure to qualify for relief under Chapter 13 and for improper venue. On January 31, 2022, the Honorable Judge McFarland of the 133<sup>rd</sup> Judicial Court ruled that no final judgment had yet been entered in her case, that there are live pleadings and she retained plenary power to hear the case. It is this case that Ms. Thomas is attempting to remove to this Court.

### **LEGAL ANALYSIS**

The party seeking removal from state court to federal court bears the burden of proving federal jurisdiction.<sup>6</sup> The movant states that she is removing the state court suit pursuant to 28 U.S.C. § 1452(a), providing for removal of claims related to bankruptcy cases to the district court where such civil action is pending. She also cites to 28 U.S.C. § 1334 which gives jurisdiction to the bankruptcy courts. However, there is no civil action pending in the Southern District of Texas, and this Court lacks jurisdiction under 28 U.S.C. § 1452(a).

**THEREFORE, IT IS ORDERED** that this case is dismissed, and remanded to the 133<sup>rd</sup> Judicial District Court of Harris County, Texas.

Signed: February 09, 2022

  
 Jeffrey P. Norman  
 United States Bankruptcy Judge

<sup>3</sup> Cause No. 2017-82388, *Elizabeth Thomas, et al v. Michael Pizzitola, et al*, In the 127<sup>th</sup> Judicial District Court, Harris County, Texas.

<sup>4</sup> Cause No. 2017-76078, *Miramar Lake Homeowners Association, et al v. Elizabeth Thomas, et al*, In the 333<sup>rd</sup> Judicial District Court, Harris County Texas.

<sup>5</sup> Case No. 18-23676, ECF No. 140

<sup>6</sup> *In re Residential Capital, LLC*, 515 B.R. 52 (Bankr. S.D.N.Y. 2014).

No.2018-14171

THOMAS, ROBERT L. JAMES ALLEN  
PLAINTIFF

§

IN THE DISTRICT COURT OF

§

§

vs.

§

133<sup>RD</sup> JUDICIAL DISTRICT

§

McCARTHY & HOLTHUS LLP., ON  
BEHALF OF FLAGSTONE LENDING GROUP  
A NON-EXISTENT A UTAH CORPORATION,  
AND SUCCESSOR/ASSIGNEE

§

§

§

J.P. MORGAN CHASE BANK N.A and  
ELIZABETH THOMAS

§

§

HARRIS COUNTY, TEXAS

Defendants

§

PRIMARY RESIDENTIAL MORTGAGE INC.

§

Interventor

§

vs.

§

ELIZABETH THOMAS

§

Defendant

§

## NOTICE REMOVAL

PLEASE TAKE NOTICE THAT, that on February 11, 2022, Elizabeth Thomas makes a special appearance for the sole purpose of filing this Notice of Removal, pursuant to 28 U.S.C. § 1332 1441 and 1446, removing the case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas vs. Primary Residential Mortgage Inc., vs Elizabeth Thomas* under cause No. 2018-14171, from the 333<sup>rd</sup> Harris County District Court to the United States Federal District Court of the Southern District of Texas; Houston Division into cause no. 22-474.

This court shall proceed no further in this action unless and until the case is remanded pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Removal is attached hereto as **Exhibit 1**.

Respectfully submitted,

By/s/Elizabeth Thomas

Elizabeth Thomas  
712 H St. NE Suite 1297  
Washington DC., 20002  
(832) 216-8623  
elizthomas234@gmail.com

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been furnished to counsel of record in accordance with the Texas Rules of Civil Procedure, this 11<sup>th</sup> day of February 2022.

By/s/Elizabeth Thomas

Unofficial Copy Office of Marilyn Burgess District Clerk

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Unofficial Copy Office of Marilyn Burgess District Clerk

**Automated Certificate of eService**

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Brandon Hakari		bhakari@mccarthyholthus.com	2/11/2022 2:51:05 PM	SENT
Elizabeth Thomas		Tethomas3@aol.com	2/11/2022 2:51:05 PM	SENT
Joseph R. Alexander	995150	joe@alexanderfirmpllc.com	2/11/2022 2:51:05 PM	SENT
Andrew TMcKinney		mckinney@mckinneytaylor.com	2/11/2022 2:51:05 PM	SENT
Cheyenne M.Zokaie		CZokaie@mccarthyholthus.com	2/11/2022 2:51:05 PM	ERROR
Ann Akins		aakins@mccarthyholthus.com	2/11/2022 2:51:05 PM	ERROR
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IN THE UNITED STATES FEDERAL DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
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THOMAS, ROBERT L. JAMES ALLEN  
PLAINTIFF

CIVIL NO. \_\_\_\_\_

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(FORMERLY 133<sup>RD</sup> DISTRICT COURT  
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A NON-EXISTENT A UTAH CORPORATION,  
AND SUCCESSOR/ASSIGNEE  
J.P. MORGAN CHASE BANK N.A and  
ELIZABETH THOMAS

Defendants

PRIMARY RESIDENTIAL MORTGAGE INC.  
Intervenor

VS.

ELIZABETH THOMAS

Defendant

---

**NOTICE OF REMOVAL AND MOTION TO TRANSFER VENUE**

Elizabeth Thomas, hereby files this “**Notice of Removal**” to remove the above entitled action to the U.S. District Court for the Southern District of Texas Houston Division for transfer of venue to U.S. District Court for the Southern District of New York Where Thomas bankruptcy is currently pending and has never filed or re-filed any adversary proceeding in any Texas bankruptcy court as follows:

**I. Background**

1. On October 29, 2018, (the "Petition Date"), Elizabeth Thomas, filed her voluntary petition for relief under Chapter 13 of Title 11 of the United States Code,

11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court of the Southern District of New York: White Plains Division commencing the above referenced bankruptcy case which bears Case No. 18-23676.

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Group L.P., and **DENY** (i) receiving any cash funds for a Utah Corporation lender named Flagstone Lending Group on October 19, 2007, to fund Thomas with a loan(ii) **deny** executing any closing loan documents between Debtor Thomas and Flagstone Lending Group; and (iii) deny recording any “deed of trust” in the Harris County Real Property Records securing said non-funded loan.

10. On February 5, 2020, JP Morgan Chase Bank N.A., filed an “Objection” to Debtor Thomas “Motion to Expunge, Reduce or Reclassify its Proof of Claim.” Instead of CHASE coming forward with evidence to “prove” (i) the **existence** of Utah Corporation lender Flagstone Lending Group, (ii) evidence the existence of a funded money purchase transaction transpired between Flagstone and Debtor Thomas, on October 19, 2007, and (iii) if so at what title company did this closing of this alleged loan take place. **Instead** submitting said proof JP Morgan Chase goes on a charade of arguments that Debtor Thomas, her son Robert Thomas and James Allen are all part of a scheme to defraud Chase of payment for this phantom advance cash purchase was (i) fraudulently release by Andersen and; (ii) deeds transferring the interest in the property are fraudulent these issues are reference and reproduces below:

*“In addition, the Debtor has filed a false satisfaction of Chase’s Loan (the “Purported Satisfaction”), in which James M. Andersen (“Andersen”), an attorney who had represented the Debtor in numerous actions, purported to act as a “substitute trustee” for Chase.” And the deeds transferring an interest property were also fraudulent and without consideration.*

11. On or about June 17, 2020, Judge Sean H. Lane U.S.B.J., signed order granting debtor Thomas Motion to “**Reclassify** Chase claim as unsecured **and Expunge**” J.P. Morgan Chase Bank N.A Claim **No. 5**, as it was discharged in a 2011 bankruptcy. Debtor Thomas 2011

discharge injunction order automatically **voids any judgment** obtained on a discharged debt. 11 U.S.C. § 524(a)(1)..

12. On December 29, 2020, Judge Sean H. Lane U.S.B.J., signed a confirmation order confirming Debtor Thomas Chapter 13 plan.

13. On January 13, 2022, the Judge Sean H. Lane U.S.B.J., denied Attorney Colleen M. McClure “Motion to Lift Debtor E. Thomas Bankruptcy Stay” on the grounds that the same claims litigated in the bankruptcy court cannot be re-litigated.

## II. Grounds for Removal:

14. Defendant Elizabeth Thomas, has filed this notice of removal seeking that this Court transfer this case to the U.S. District Court for the Southern District of New York where her bankruptcy case is pending.

15. A bankruptcy court’s confirmation order that is final and no longer subject to appeal [is] ‘res judicata to the parties and those in privity with them.’” See: Travelers Indem. Co. v. Bailey, 557 U.S. 137, 152, 129 S. Ct. 2195, 2205 (2009). It become “res judicata to the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.” I.d., 557 U.S. 137, 152, 129 S. Ct. 2195, 2205 (2009).

16. A “confirmation order has a preclusive effect, foreclosing relitigation of any issue litigated by the parties and or any issue necessarily determined by the confirmation order.” Bullard v. Blue Hills Bank, 135 S. Ct. 1686, at 1692 (quoting 8 *Collier on Bankruptcy* ¶ 1327.02[1][c], at 1327–26; United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 275 (2010)).

The orders confirming a plan precludes re-litigation of confirmation “**objections**” raised “**or those that could have been raised before confirmation.**” The application of **res judicata** produces finality for the parties and promotes judicial economy. Parties know that when final judgment is entered and all appeals are exhausted, the **case is over** and the decision will be binding on all issues determined in the lawsuit or proceeding. Id.

**A. Re-Litigation of Same Claims Already Litigated in Bankruptcy and Are Property of the Bankruptcy Estate.**

17. **Unbeknownst** to Debtor Thomas is that on **March 18, 2019**, *Primary Residential Mortgage Inc.*, filed a (1) Original Petition in Intervention; (2) Motion to Reconsider and Vacate Order Granting Defendant Elizabeth Thomas’ Motion for Summary Judgment, and Objection to the Proposed Agreed to Final Judgment; (3) Motion for New Trial; (4); Motion for Sanctions; and (5) Motion to Stay Proceedings and Transfer This Case to the 127th Judicial District Court in a closed case in the 133<sup>rd</sup> District Court, Harris County, Texas, where Debtor Thomas was a former defendant before this Court dismissed the Plaintiffs case with prejudice and debtor Thomas was dismissed from case on **February 14, 2019**.

18. Debtor Thomas had been named as a former defendant in a case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Flagstone Lending Group a Non-Existent Utah Corporation and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas* under cause No. 2018-14171, in the 133<sup>rd</sup> District Court, Harris County, Texas for which debtor was sued for making Material Misrepresentations.

19. The cause of action for making Material Misrepresentations against Debtor Thomas is that she failed in selling the property to disclosed that **formerly** recorded Deed

of Trust for a October 19, 2007, money purchase loan from a *Utah Corporation* Flagstone Lending Group, is allegedly encumbering said property.

20. On November 30, 2018, Defendant Elizabeth Thomas filed a Motion for Summary Judgment (“the Motion”), on Plaintiffs claims for misrepresentation on grounds that the Flagstone Deed of Trust formerly in the Harris County Real Property Records under instrument No. 20070643669, is not a valid lien encumbering said property is wrongfully recorded and never was funded. The validity of lien on property is a question of law. See: *Florey v. Estate of McConnell* real, 212 S.W.3d 439 (Tex. App., Austin 2006, pet. Denied).

21. Incorporation by Reference filed with the Court here: is Debtor Thomas “Motion for Summary Judgment and summary judgment Exhibits- A- M as evidence that support twelve (12) grounds why said Deed of Trust does not constitute a valid lien on said property: relevant here and in pertinent part are the facts that (Exhibit C) Evidences that Thomas submitted copies of her closing loan documents evidencing that on October 19, 2007, she closed at MTH Title Company LC., on a Texas Home Equity loan in the amount of \$235,262.47, with lender MTH Lending Group L.P., to refinance the property located at 8202 Terra Valley Lane, Tomball Texas 77375.; (Exhibit D) Evidence that according to the Utah Secretary of State there does not exist a Corporation by the name of FLAGSTONE LENDING GROUP, organized and existing under the laws of the State of Utah; and (Exhibit G) Evidence that according to Stewart Title Company its former title company f/k/a MTH Title Company on October 19, 2007, (i) never received any cash from a Utah lender Flagstone Lending Group and funded Thomas with loan (ii) never recorded any deed of trust in Harris County Real Property records and (iii) on October 19, 2007, Thomas closed a Texas Home

Equity Loan etc.

22. Defendants McCarthy & Holthus LLP., et al., represented themselves individually and the interest of Non-Existent Flagstone Lending Group a **Utah Corporation** and J.P. Morgan Chase Bank N.A., interest, never filed a response to said summary judgment motion or any objection to the summary judgment evidence nor a cross- counterclaim. **While attempting to collect a debt discharged since 2011.**

23. On February 14, 2019, the Court granted Defendant Thomas motion for summary judgment by a signing a “**plaintiffs take nothing judgment**” which is a dismissal of Plaintiffs claims with prejudice and a Mother Hubbard Clause “all relief a not granted is hereby denied.” The Court also ordered that Defendant Thomas be **dismissed** as a party from the case was considered for years as a **final judgment**.

24. **Unbeknownst** to Debtor Thomas is that on March 18, 2019, Primary Residential Mortgage Inc., *had* filed a “Original Petition Intervention” and never **served** Debtor Thomas with a citation to bring her back into the case as a defendant and appear in court or with a copy of said petition.

25. Primary March 18, 2019, “Original Petition Intervention” filed seeks to intervene in the cause action against former defendant Thomas regarding a **formerly** recorded Deed of Trust for a October 19, 2007, for an alleged money purchase loan from a *Utah Corporation Flagstone Lending Group*, that the Court dismissed with prejudice on **February 14, 2019.**

26. According to Primary Residential Mortgage Inc., a Nevada Corporation pleadings they have interest in the case because of their former local State of Texas **d/b/a** which had a similar name of Flagstone Lending Group. In other words Primary is alleging

that there is no difference between the “Utah Corporation Flagstone Lending Group” and their local Texas d/b/a Flagstone Lending Group, this is materially false. This is true also for a ***Utah Corporation*** MTH Lending Group these are “Utah Corporations” not Texas d/b/a’s.

27. Primary Residential Mortgage Inc., a Nevada Corporation claims to be the lender named on the formerly recorded Deed of Trust as local State of Texas d/b/a with a similar name of Flagstone Lending Group for a, money purchase loan allegedly made to the Debtor Thomas on October 19, 2007 that was allegedly assigned to J.P. Morgan Chase Bank N.A.

28. When in fact according to Stewart Title Company who formerly own f/k/a MTH Title Company L.C., settlement closing records reveal that on October 19, 2007, Primary Residential Mortgage Inc., closed on “***commercial business transaction***” for cash with Meritage Corporation. While on October 19, 2007, Debtor Thomas closed on a “***consumer***” loan transaction with MTH Lending Group L.P., (not to be confused with Utah Corporation lender MTH Lending Group).

29. The wrongfully recorded Deed of Trust formerly in the Harris County Real Property Records under instrument No. 20070643669, involves an alleged “***consumer***” purchase money loan transaction from a “***Corporation Lender***” in the State of Utah. Not a “***commercial business transaction***” with Meritage Corporation.

30. Unbeknownst the debtor Thomas is that recently beginning in January of 2022, Court have hearings were held 133<sup>rd</sup> District Court without notice to her as the Court has set a trial date for February 22, 2022.

31. The trial date set for February 22, 2022, is to take Debtor Thomas to trial on the same said claims, causes of action that the Court dismissed with prejudice on February 14,

2019, which has not been set aside and without service on debtor Thomas.

32. Debtor Thomas, argues that all claims, causes of action or regarding the wrongfully formerly recorded Deed of Trust in the Harris County Real Property under instrument number 20070643669, were already litigated or could have been litigated in Debtor Thomas bankruptcy case prior to the **December 29, 2020**, confirmation order. **No** appeals were filed.

33. Debtor Thomas, argues that all claims, causes of action or regarding the wrongfully formerly recorded Deed of Trust in the Harris County Real Property under instrument number 20070643669, for alleged Lender Flagstone Lending Group a “STATE OF UTAH” Corporation allegedly Assigned to J.P. Morgan Chase Bank N.A., are now barred under the doctrine of “res judicata.”

## **II. Removal under 28 U.S.C. §1452**

34. Defendant Elizabeth Thomas, has filed this notice of removal seeking that this Court transfer this case to the U.S. District Court for the Southern District of New York where her bankruptcy case is pending. On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. §1412, except as provided in Rule 7019(2).

35. The 133rd Judicial District Court, Harris County, Texas case may be removed to pursuant to 28 U.S.C. §9027(a)(2) and 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory

power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

36. Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has jurisdiction to transfer this case to the U.S. District Court for the Southern District of New York where Debtor Thomas bankruptcy case is pending as that Court has original jurisdiction over all civil proceedings "arising under title, or arising in or related to cases under Title 11." 28 U.S.C. § 1334(b); and pursuant to 28 U.S.C. § 9027(a)(2).

37. The 133rd Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas. Intervenor Primary Residential Mortgage Inc., vs Elizabeth Thomas*, Defendant under cause No. 2018-14171, is directly related to Debtor's Thomas Bankruptcy Case within the meaning of 28 U.S.C. § 1334 because the claims for relief asserted by the *Primary Residential Mortgage Inc.*, are the same exact claims that have already litigated against the debtor in the bankruptcy court (the Contested Matter"). More importantly litigating the same claims again outside of the bankruptcy court would interfere with the Debtor fresh start under the Bankruptcy Code.

38. The 133rd Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas vs.*

Intervenor **Primary Residential Mortgage Inc., vs Elizabeth Thomas**, Defendant under cause No. 2018-14171, is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

39. Based on the foregoing, the 133rd Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas Intervenor **Primary Residential Mortgage Inc., vs Elizabeth Thomas***, Defendant under cause No. 2018-14171 may be removed.

40. Defendants seeks a transfer of this case to U.S. Federal District Court for the Southern District of New York;

41. Upon removal, to U.S. Federal District Court for the Southern District of New York; this case of the case entitled the *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas vs. Intervenor **Primary Residential Mortgage Inc., vs Elizabeth Thomas***, Defendant under cause No. 2018-14171

can thereafter be transferred to the United States Bankruptcy Court of the Southern District of New York; White Plains Division, the proceeding will be a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (o), and a contested matter.

42. Transfer to U.S. Federal District Court for the Southern District of New York; is the proper court in which has jurisdiction over this remove this action pursuant to 28 U.S.C. § 1452 and FRBP 9027, and the bankruptcy court has nationwide jurisdiction over parties within the United States.

43. *Primary Residential Mortgage Inc.*, is located within the United States.

44. Moreover *Primary Residential Mortgage Inc.*, and Debtor Thomas are diverse.

### III. THE PARTIES ARE DIVERSE 28 U.S.C. § 1332

45. This Notice of Removal is also based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and 28 U.S.C. § 1441(a).

46. *Primary Residential Mortgage Inc.*, is a Nevada Corporation, with a principle place of business in State of Utah.

47. Defendant Elizabeth Thomas is a resident of the State of New York and has never been served with citation of service or with a copy of the “Original Petition” as such can remove this action at anytime.

48. The amount for which *Primary Residential Mortgage Inc.*, seeks to collect is \$239,400.00.

49. Because there is complete diversity of citizenship between the actual and real parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs, all applicable requirements have been met, and the Action is properly removed to this Court.

### IV. MOTION TO TRANSFER VENUE TO NEW YORK

50. The Defendant Elizabeth Thomas, seeks a transfer of this case to U.S. Federal District Court for the Southern District of New York, here her bankruptcy case is currently pending in the U.S. Bankruptcy Court for the Southern District of New York: White Plains Division under cause No. 18-23676.

### V. ADOPTION AND RESERVATION OF DEFENSES

51. Nothing in this Notice of Removal shall be interpreted as a waiver or

relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) arguments that venue is improper; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available.

**WHEREFORE**, the Elizabeth Thomas hereby removes the case entitled the *Robert L. Thomas and James Allen vs. McCarthy & Holthus LLP, on behalf of Non-Existent Flagstone Lending Group and its Successor J.P. Morgan Chase Bank N.A., and Elizabeth Thomas vs. vs. Intervenor Primary Residential Mortgage Inc., vs Elizabeth Thomas*, Defendant under cause No. 2018-14171, to the U.S. Federal District Court for the Southern District of Texas; Houston Division to transfer to United States District Court for the Southern District of New York; pursuant to 28 U.S.C. § 1452 and FRBP.

Respectfully submitted,

/s/Elizabeth Thomas

Elizabeth Thomas Self Represented  
712 H Street NE #1297  
Washington D.C. 20002  
elizthomas234@gmail.com

### CERTIFICATE OF SERVICE

This is to certify that the foregoing NOTICE OF REMOVAL WAS SENT to the party below Via United States Post Office mail on the 11<sup>th</sup> day of February 2022, postage prepaid thereon to:

**MCKINNEY TAYLOR P.C.**  
Three Riverway, Suite 900  
Houston, Texas 77056  
Attorney for *Primary Residential Mortgage Inc.*,

/s/Elizabeth Thomas

Unofficial Copy Office of Marilyn Burgess District Clerk

Unofficial Copy Office of Marilyn Burgess District Clerk

Cause No. 2020-35780

JAMES ALLEN ROBERT L. THOMAS	§	IN THE DISTRICT COURT OF
AND ALLAN A. HAYE	§	
	§	
Plaintiffs/Counter Defendant	§	
vs.	§	80 <sup>th</sup> JUDICIAL DISTRICT COURT
	§	
PCF PROPERTIES IN TX. LLC SUCCESSOR	§	
to NON-EXISTENT FLAGSTONE LENDING	§	
GROUP A UTAH CORPORATION ITS	§	
ASSIGNEE J.P. MORGAN CHASE BANK N.A	§	
And ELIZABETH THOMAS	§	
Third Party Defendants	§	HARRIS COUNTY, TEXAS
	§	
J.P. MORGAN CHASE BANK N.A.	§	
Third Party Defendants	§	

**AMENDED NOTICE REMOVAL**

**PLEASE TAKE NOTICE THAT**, that on March 7, 2022 debtor Elizabeth Thomas filed a Amended Notice of Removal, pursuant to 28 U.S.C. § 1332 1441 and 1446, removing the case from the 80<sup>th</sup> Harris County District Court to the **United States Federal District Court of the Southern District of Texas; Houston Division** into cause no. 22-705

This court shall proceed no further in this action unless and until the case is remanded pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Removal is attached hereto as **Exhibit 1**.

Respectfully submitted,

By/s/Elizabeth Thomas

Elizabeth Thomas  
712 H St. NE Suite 1297  
Washington DC., 20002  
(832) 216-8623  
elizthomas234@gmail.com

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been furnished to counsel of record in accordance with the Texas Rules of Civil Procedure, this 7th day of March 2022.

Barry & Sewart PLLC  
4151 Southwest Freeway, Suite 680  
Houston Texas 77027  
Tel. (713) 722-0281  
Fax. (713) 722-9786  
Email: [evictions@barryandsewart.com](mailto:evictions@barryandsewart.com)

**ATTORNEY'S FOR PCF PROPERTIES OF TEXAS LLC. ON  
BEHALF OF FLAGSTONE LENDING  
GROUP, NON-EXISTENT UATH  
CORPORATION AND SUCESSOR J.P..  
MORGAN CHASE BANK N.A**

Quilling, Selander, Lownds,  
Winslett & Moser P.C.  
2001 Bryan Street, suite 1800  
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Tel. (214) 871-2100  
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**ATTORNEY'S FOR J.P. MORGAN CHASE BANK N.A**

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**ATTORNEY'S FOR JAMES ALLEN, ROBERT L. THOMAS**

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Keith R. Nguyen Attorney at Law  
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**ATTORNEY FOR ALLAN HAYE**

By/s/Elizabeth Thomas

Unofficial Copy Office of Marilyn Burgess District Clerk

Unofficial Copy Office of Marilyn Burgess District Clerk

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 62347934  
Status as of 3/7/2022 10:53 AM CST

**Case Contacts**

Name	BarNumber	Email	TimestampSubmitted	Status
Colleen McCure		colleen.mcclure@att.net	3/7/2022 10:44:05 AM	SENT
James Allen		jamesthegreat74@gmail.com	3/7/2022 10:44:05 AM	SENT
Colleen McClure		mcclurelegalassistant@gmail.com	3/7/2022 10:44:05 AM	SENT
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Keith Nguyen		kmlawfirm@gmail.com	3/7/2022 10:44:05 AM	SENT

EXHIBIT-1

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**JAMES ALLEN, ROBERT L. THOMAS  
ALLAN HAYE**  
*Plaintiffs/Counter-Defendants*

**vs.**

**PCF PROPERTIES OF TEXAS LLC. ON  
BEHAL OF FLAGSTONE LENDING  
GROUP, NON-EXISTENT UATH  
CORPORATION AND SUCESSOR J.P..  
MORGAN CHASE BANK N.A AND  
ELIZABETH THOMAS**  
*Third Party Defendants*

**J.P. MORGAN CHASE BANK N.A**  
*Third Party Defendants*

**(formerly in the 80<sup>th</sup> Judicial District  
Court, Harris County Texas Cause No.  
2020- 35780**

**This case is related to In re Elizabeth  
Thomas in the U.S. Bankruptcy  
Court Southern of New York; White  
Plains Division Chapter 13; Case No  
18-23676**

**AMENDED NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1334, 1452, and Federal Rule of Bankruptcy Procedure 9027(c) Debtor Elizabeth Thomas (“Thomas”), hereby files this “Amended Notice of Removal” removing the case entitled *James Allen , Robert L. Thomas and Allan Haye vs. PCF Properties of Texas LLC., on behalf of Flagstone Lending Group a Non-Existent Utah Corporation and J.P. Morgan Chase Bank N.A. (“PCF”) Elizabeth Thomas and J.P. Morgan Chase Bank N.A.*, from the 80<sup>th</sup> Judicial District Court, Harris County Texas Cause No. 2020-35780 to the **United States District Court for the Southern District of Texas; Houston Division** as follows:

## **I. Background of Claims/Issues Already Litigated**

1. On October 29, 2018, (the "Petition Date"), Defendant Elizabeth Thomas, filed her voluntary petition for relief under Chapter 13 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court of the Southern District of New York: White Plains Division commencing the Case No. 18-23676.

2. On January 3, 2019, J.P. Morgan Chase Bank N.A., filed a proof of claim alleging to be a secured creditor of debtor Thomas and that she was in default on her October 19, 2007, money purchase mortgage loan from Flagstone Lending Group a Utah Corporation and owed the outstanding amount of \$489, 069.96, in past due mortgage payments that is a secured claim encumbering the property located at 8202 Terra Valley Lane, Tomball Tx 77375. In support of its proof of claim J.P. Morgan Chase Bank filed a copy of a Deed of Trust produced a formerly recorded "Deed of Trust" in the Harris County Real Property Records under instrument No. 20070643669, and a promissory note.

3. On January 13, 2020, debtor E. Thomas filed a "*Motion to Expunge, Reduce or Reclassify J.P. Morgan Chase Bank N.A., Proof of Claim No. 5.*" Thomas pleaded that the "Debtor borrowed approximately \$235, 262. 37 from her lender MTH Lending Group on October 19, 2007, bearing an interest rate of 6.375% (the "Loan and Mortgage") for the refinance of the residential property located at 8202 Terra Valley Lane, Tomball Tx., (the Property) and that:

4. Subsequently Debtor Thomas sold the Property to a third party and no longer owns the property. Accordingly, the Loan and Mortgage is no longer secured as to the

Debtor, as the Debtor does not own the property. Accordingly, the claim should be reclassified as **unsecured**. As an unsecured debt, this claim should be expunged as the Debtor received a **discharged** in a Chapter 7 bankruptcy in the year of **2011** and listed the debt to this mortgage.

5. **The Requested Relief in Debtor Thomas Motion:** that the Court issue an Order reclassifying CHASE claim as unsecured and as a unsecured debt expunging it as the mortgage debt was **previously discharged in a prior bankruptcy in the year of 2011.**

6. Before the Honorable Judge Sean H. Lane of the United States Bankruptcy Court for the Southern District of New York White Plains Division, was the task of determining whether debtor Thomas, on October 19, 2007, obtained a money purchase loan in the amount of \$239,400.00, from a Utah Corporation lender Flagstone Lending Group or a Texas Home Equity Loan from **lender MTH Lending Group L.P.**

7. However the Flagstone "Deed of Trust" and "Promissory Note" produced as evidence by J.P. Morgan Chase avers that these instruments were executed on October 19, 2007, at f/k/a/ MTH Title Company L.C., a closing title company that Stewart Title Company held a 51% controlling partnership in. A "First Set of Admissions" was propounded toward Stewart Title Company, as to a alleged mortgage transaction between Flagstone and Elizabeth Thomas, on October 19, 2007; and Stewart **DENY** (i) MTH Title Company received any cash funds from lender named Flagstone Lending Group on October 19, 2007, to fund Thomas with a loan(ii) **DENY** MTH Title Company executing any closing loan documents between Debtor Thomas and Flagstone Lending Group; and

(iii) **DENY** MTH Title Company recording any “deed of trust” in the Harris County Real Property Records securing said non-funded loan. Stewart however **Admits** that on October 19, 2007, Elizabeth Thomas closed a Texas Home Equity Loan with her lender MTH Lending Group L.P.

8. J.P. Morgan Chase Bank N.A., was to produce evidence supporting (i) the existence of Utah Corporation lender Flagstone Lending Group, (ii) evidence of a funded money purchase transaction transpired between Flagstone and Debtor Thomas, on October 19, 2007, and (iii) if so at what title company did this loan closing transaction allegedly take place..

9. On February 5, 2020, JP Morgan Chase Bank N.A., filed an “Response/Objection” to Debtor Thomas “Motion to Expunge, Reduce or Reclassify its Proof of Claim” and failed to produce any “proof” that a money purchase loan transaction actually transpired between Flagstone and Debtor Thomas.

10. Instead February 5, 2020, JP Morgan Chase chose to litigate the alleged issues that Debtor Thomas, her son Robert Thomas and James Allen are all part of a scheme to defraud Chase of payment for advance cash purchase money loan that was (i) fraudulently recorded as release by Andersen and; (ii) deeds transferring the interest in the property are fraudulent these issues are reference and reproduces below:

*“In addition, the Debtor has filed a false satisfaction of Chase’s Loan (the “Purported Satisfaction”), in which James M. Andersen (“Andersen”), an attorney who had represented the Debtor in numerous actions, purported to act as a “substitute trustee” for Chase.” And the deeds transferring an interest property were also fraudulent and without consideration.*

11. JP Morgan Chase also argued that the Bankruptcy Court had granted it’s

“Motion to Lift the Bankruptcy Stay” on May 5, 2019, [ Doc.47] as to Debtor Thomas interest in said property and to protect J.P. Morgan Chase secured lien as a creditor.

12. On June 17, 2020, Judge Sean H. Lane U.S.B.J., signed order granting debtor Thomas Motion to “**Reclassify** J.P. Morgan Chase Bank N.A Claim **No. 5**, from “**Secure**” to “**Unsecured**” and to **Expunge**” the debt as it was discharged in a prior 2011 bankruptcy. Debtor Thomas 2011 discharge injunction order automatically **voids any judgment** obtained on a discharged debt. 11 U.S.C. § 524(a)(1).

13. On December 29, 2020, the Honorable Judge Sean H. Lane U.S.B.J., signed a confirmation order confirming Debtor Thomas Chapter 13 plan.

14. On January 13, 2022, the Honorable Judge Sean H. Lane U.S.B.J., denied Alvin, R. Mullen, Catrice Henry and Albert Perry III, “Motion to Lift Debtor E. Thomas Bankruptcy Stay” because under section 1328 of the Bankruptcy Code, at the conclusion of a Chapter 13 plan, the debtor receives a discharge of all debts provided for in the plan as well as all **claims** that were disallowed under section 502 of the Bankruptcy Code.

## **II. CAUSES OF ACTIONS: Contempt Under 11 U.S.C. § 105(a)**

### **A. *Collateral Attack on Bankruptcy Court Previous Orders in State Court.***

15. J.P. Morgan Chase Bank N.A., via PCF Properties of Texas LLC., on behalf of Flagstone Lending Group a Non-Existent Utah Corporation and J.P. Morgan Chase Bank N.A. (“PCF”) Elizabeth Thomas and J.P. Morgan Chase Bank N.A., have **re-filed** its “proof of claim” that was disallowed in the bankruptcy court into the 80<sup>th</sup> District Court, Harris County Texas, so as to collaterally attacked the New York Bankruptcy Court June 17, 2020, order by raising the same claims and seeking to relitigate these same exact claims/ issues

in the state court that were previously adjudicated by New York Bankruptcy court. Accordingly, the Debtor Thomas requests that the PCF and J.P. Morgan Chase Bank N.A., be found in contempt of court and sanctioned under section 105(a).

16. PCF and J.P. Morgan Chase Bank N.A., together are presently in state court collaterally attacking the Honorable Judge Sean H. Lane U.S.B.J., June 17, 2020, order/judgment of New York Bankruptcy Court order by attempting to re-litigate its proof of claim /issues that were previously adjudicated in the New York Bankruptcy Court through the claim allowance process in the State Court. The State Court claims are not distinct from those already adjudicated into a final judgment as detailed below:

- a. PCF and J.P. Morgan Chase claims that Elizabeth Thomas and her cohorts: Robert Thomas, Allen Haye and attorneys Colleen McClure and James M. Andersen; have filed fraudulent documents with the county clerk in order to avoid paying a loan Elizabeth Thomas obtained to purchase the property made subject of this case.
- b. PCF and J.P. Morgan Chase alleged that to finance the purchase of the Subject Property, Thomas executed a note and deed of trust on October 19, 2007, granting the lender, Flagstone Lending Group, a lien on the Subject Property in the amount of \$239,400.00. That deed of trust was recorded on October 25, 2007, under Instrument 2007-0643668 (the "Mortgage Lien").
- c. The Mortgage Lien was subsequently assigned to JPMorgan Chase Bank, N.A.. Said assignment was recorded in the Real Property Records of Harris County, Texas.

PCF Counter/Claim at ¶¶ 2-3. Exhibit 1.

17. Here PCF and J.P. Morgan Chase Bank N.A., is seeking the state court to reverse, alter and/or modify Honorable Judge Sean H. Lane U.S.B.J., June 17, 2020, order/judgment that "Reclassified" J.P. Morgan Chase Bank N.A from a Secure" claim to "Unsecured" claim via a collateral attack in State Court by seeking said court to issue

a order that instead finds that CHASE, has or had a secured lien deed of trust was recorded on October 25, 2007, under Instrument 2007-0643668], encumbering said property own by Debtor Thomas.

18. Additionally PCF and J.P. Morgan Chase Bank N.A., is seeking the state court to reverse, alter and/or modify Honorable Judge Sean H. Lane U.S.B.J., June 17, 2020, order/judgment that “Expunged” the mortgage debt as it was discharged in a prior 2011 bankruptcy by having state court convert a discharged debt into a non-discharged debt by ruling that debtor Thomas on October 19, 2007, borrowed money from Flagstone Lending Group in the amount of \$239,400.00, and defaulted on the repayment of this debt: As it was not discharged in 2011 in a prior bankruptcy.

- a. To purchase the Subject Property, Elizabeth Thomas borrowed money from Flagstone Lending Group in the amount of \$239,400.00. Elizabeth Thomas pledge the Subject Property to secure the loan, thereby placing a lien against the Subject Property in favor of Flagstone Lending Group. JPMorgan Chase Bank, N.A. (hereinafter “Chase”) was assigned the Deed of Trust.
- b. On December 23, 2016, James Andersen executed a fraudulent deed claiming to transfer the Subject Property to Elizabeth Thomas. The deed was recorded in the real property records of Harris County, Texas under Instrument RP-2016-577139.1
- c. On February 23, 2018, James M. Andersen executed a “Trustee’s Notice of Satisfaction of Deed of Trust claiming” to release the lien from the Subject Property. That document was recorded in the real property records of Harris County, Texas under Instrument RP-2018-76715.<sup>1</sup> See: PCF Third Party Petition at ¶¶ 2-4; Exhibit 2.

1. Texas Supreme Court in its decision in Nobles v. Marcus, 533 S.W.2d 923 (Tex.1976), ruled that a claimant who is not a party to a deed and release cannot sue or file a claim to set it aside based on fraud. And until a court sets a “deeds, the release or assignments aside, they remain valid and represents prima facie evidence of title and release.” Id. at 926; see also Morlock, L.L.C. v. Bank of N.Y., 448 S.W.3d 514, 517 (Tex. App.—Houston [1st Dist.] 2014, pet. denied) (“A third party lacks standing to challenge this voidable defect in the assignment.”); Lopez v. Morales, No. 04-09-00476-CV, 2010 WL3332318, at \*3 (Tex. App.—San Antonio, Aug. 25, 2010, no writ) (mem. op.) (“[A] suit or claim to set aside a deed obtained by fraud can only be maintained by the defrauded party.”)

19. A state court cannot modify a bankruptcy court discharge order by converting a discharged debt into a non-discharged debt. *Hamilton*, 540 F.3d at 376. If the Court did so, the judgment would be “void ab initio under § 524(a)[.]” Id., 540 F.3d at 375

20. By PCF and J.P. Morgan Chase Bank repeatedly include allegations in there state courts pleadings upon which New York Bankruptcy Court has already adjudicated into a final judgment and fails to make any mention of the ruling to the state court. Instead PCF and J.P. Morgan Chase Bank is arguing that June 17, 2020, order never concluded that CHASE alleged lien is unsecured and that the mortgage debt was discharged in a 2011 prior bankruptcy through a collateral attack. A collateral attack is a “tactic whereby a party seeks to circumvent an earlier ruling of one court by filing a subsequent action in another court.” *Pratt v. Ventas, Inc.*, 365 F.3d 514, 519 (6th Cir. 2004) (citation omitted). PCF and J.P. Morgan Chase Bank should be held in contempt for a collateral attack.

21. Additionally Debtor Thomas seeks enforcement of her confirmation order in that said claims defendants seek to re-litigate are now barred under the doctrine of res judicata. On December 29, 2020, the Honorable Judge Sean H. Lane U.S.B.J., signed a confirmation order confirming Debtor Thomas Chapter 13 plan. A confirmation order has a res judicata effect foreclosing re-litigation of any issue litigated by the parties and or any issue necessarily determined by the confirmation order.” *Bullard v. Blue Hills Bank*, 135 S.Ct. 1686, at 1692 (quoting 8 *Collier on Bankruptcy* ¶ 1327.02[1][c], at 1327-26; *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 275 (2010)). The order confirming a plan precludes re-litigation of confirmation “objections” raised “or those that could have been raised before confirmation.” The application of res

**judicata** produces finality for the parties and promotes judicial economy. Parties know that when final judgment is entered and all appeals are exhausted, the **case is over** and the decision will be binding on all issues determined in the lawsuit or proceeding. *Id.*

22. Once confirmation occurs, a party or their privities may not raise any issue that it could have raised before confirmation. *In re Barry*, 201 B.R. 820, 823 (C.D. Cal. 1996). PCF is in privity with J.P. Morgan Chase Bank N.A., and 11 U.S.C. § 1327, of the Bankruptcy Code bars these state court proceedings. See: *Eagle Properties, Ltd. v. Scharbauer*, 807 S.W.2d 714, 718 (Tex. 1991).

### III. WILLFUL VIOLATION OF THE BANKRUPTCY AUTOMATIC STAY

23. The Debtor Thomas seeks that PCF Properties of Texas LLC., on behalf of Flagstone Lending Group, a Non-Existent Utah Corporation and J.P. Morgan Chase Bank N.A. (“PCF”), and Defendant J.P. Morgan Chase Bank N.A., (“CHASE”) be found in contempt and sanctioned for willfully violating the bankruptcy automatic stay under 11 U.S.C. § 362(a)(3).

24. Unlike section 362(a)(1), which prohibits acts “against the debtor,” Section 362(a)(3) addresses acts “to exercise control over property of the estate,” including causes of action. 11 U.S.C. § 362(a)(3); *In re Nat’l Century Fin. Enter., Inc.*, 423 F.3d at 577-78 (citation omitted).

25. On April 15, 2021, Debtor Elizabeth Thomas, filed a “Suggestion of Bankruptcy” in the 80<sup>th</sup> District Court, Harris County Texas, and gave notice that cause of action, claims and/or issues regarding whether CHASE has or had a secured lien under a **formerly** recorded Deed of Trust securing a money purchase loan from Flagstone

Lending Group; and whether Debtor Thomas was in default of this alleged mortgage debt has been already been litigated these exact same claims with J.P. Morgan Chase and they have been adjudicated into a final judgment in the New York Bankruptcy Court through the claim allowance process and under section 1328 of the Bankruptcy Code, at the conclusion of Debtor Thomas Chapter 13 plan, the debtor receives a discharge of all debts provided for in the plan as well as all claims that were disallowed under section 502 of the Bankruptcy Code.

26. Debtor Thomas gave notice to PCF and J.P. Morgan Chase that its claims were disallowed under section 502 of the Bankruptcy Code and all of CHASE the claims that were litigated or could have been litigated are now property of the bankruptcy estate pending a discharge order as such is subject to bankruptcy stay.

27. Second Circuit, has adopted the majority view, including the Fifth circuit concluding that the stay that terminates “with respect to the debtor” under section 362(c)(3)(A) applies only against the debtor and the debtor's property, while the stay against estate property remains in effect. See *In re Hale*, 535 B.R. 520 (Bankr. E.D.N.Y. 2015); *Weil*, 2013 WL 1798898 (adopting majority view that section 362(c)(3) only provides for a partial termination of the stay); *In re McFeeley*, 362 B.R. 121, 125 (Bankr.D.Vt.2007) (joining the majority of courts and holding that the stay that terminates under section 362(c)(3)(A) is the stay of actions against the debtor or property of the debtor but does not diminish the stay of actions against property of the estate); *In re Rice*, 392 B.R. 35, 38 (Bankr.W.D.N.Y.2006) (“Although 11 U.S.C. § 362(c)(3)(A) has effected a termination of the automatic stay ‘with respect to the debtor,’ all other aspects of the automatic stay

remain operative, including the stay of proceedings to obtain possession of estate property.”). *But see, In re Wilson*, 2014 WL 183210 (Bankr .D. Conn. January 15, 2014)

28. On April 15, 2021, the 80<sup>th</sup> District Court, Harris County Texas, placed said case at issue on bankruptcy stay hold.

29. On May 7, 2021, Defendant PCF and J.P. Morgan Chase wrote a letter to Judge Jeralynn Manor of the 80<sup>th</sup> District Court arguing that there is presently no “bankruptcy stay in effect” that on May 5, 2019, the New York Bankruptcy court signed a order lifting the bankruptcy stay as to J.P. Morgan Chase a creditor interest in the property and sought to moved the state court to “lift the bankruptcy stay.”

30. On May 10. 2021, James Allen, Robert L. Thomas and Allan Hay, responded that on June 19, 2020, the New York Bankruptcy court signed a order “reclassifying” J.P. Morgan Chase interest from secured to “unsecured” .....as such CHASE does not hold a claim secured by the ... interest in real property, and the provisions of section 362(d)(4) are no longer applicable. Moreover PCF is not a credit in Thomas bankruptcy.

31. Unable to file a Motion to Lift the Stay in the New York bankruptcy Court. On November 16, 2021, and PCF, and J.P. Morgan Chase filed joint Motion labeled as a “ Joint Motion for Status Conference” in State Court that in substance is instead a “Motion to Lift the Bankruptcy Stay” and argued that there is no stay under § 362(c)(3)(A).

32. On February 14, 2022, Debtor Thomas filed a cross response to Defendant PCF, and J.P. Morgan Chase “Joint Motion to Lift Bankruptcy Automatic Stay” and argued that § 362(c)(3)(A) terminates the stay only with respect to the debtor; it does not terminate the stay with respect to the property of the bankruptcy estate. *In re Paschal*,

337 B.R. 274 (Bankr. E.D.N.C. 2006); *In re Charles*, 332 B.R. 538 (Bankr. S.D. Tex. 2005); *In re Williford*, 2013 WL 3772840 (Bankr. N.D. Tex. July 17, 2013).

33. On February 14, 2022, state court held a hearing Defendants PCF, and J.P. Morgan Chase argued that they are requesting as alleged creditors or “Parties in Interest”) for state court after “notice and a hearing,” to lift the bankruptcy stay and state court may grant relief from the stay “for cause” “by terminating, annulling, modifying, or conditioning [the] stay[.]” 11 U.S.C. 362(d)(1).

34. State court has set hearing by submission on the Defendants PCF and J.P. Morgan Chase “Motion to Lift Stay” for March 7, 2022, and requested the Parties to file further briefs supporting the terminating, annulling, modifying, or conditioning [the] stay[.]” 11 U.S.C. 362(d)(1).

35. Debtor Thomas objects to the March 7, 2022, hearing in state court in light of the automatic stay's importance, “[o]nly a bankruptcy court may lift the stay” and “[c]onduct that bypasses the bankruptcy court and violates the automatic stay” is “impermissible.” *In re Fugazy Exp., Inc.*, 982 F.2d 769, 776-77 (2d Cir. 1992).

36. Defendants have willfully violated the bankruptcy stay after receiving notice that claims they seek to peruse belong to the Debtor’s bankruptcy estate causing damages to the Debtor, sanctions should be granted for violation of Section 362(a)(3) addresses acts “to exercise control over property of the estate,” including causes of action. 11 U.S.C. § 362(a)(3); *In re Nat’l Century Fin. Enter., Inc.*, 423 F.3d at 577-78 (citation omitted).

37. **Damages:** Debtor Thomas has suffered actual damages thru loss of wages, including emotional distress, costs and attorneys’ fees.

#### IV. BANKRUPTCY STAY IS IN EFFECT

38. On February 14, 2022, Debtor Thomas, also gave notice to Defendants PCF and J.P. Morgan Chase, and the State Court that on January 13, 2022, Judge Sean H. Lane U.S.B.J., denied a Third Party Intervenor Alvin R. Mullen “Motion to Lift the Stay” in case entitled *Miramar Lake Homeowners Association Inc., et al., vs. Elizabeth Thomas et al.*, pending in the 333<sup>rd</sup> Judicial District Court, Harris County, Texas under cause No. 2016-879421.

39. Third Party Intervenor Alvin R. Mullen II, along with Catrice Henry, Albert Perry III, and thousands if not millions of consumers threw out the 50 States of Union all have the same issue as Debtor Thomas i.e, enforcement by J.P. Morgan Chase of mortgage loans that were never funded. These claims are pending as third party petitions with the case entitled *Miramar Lake Homeowners Association Inc., et al., vs. Elizabeth Thomas et al.*, under cause No. 2016-879421 in the 333<sup>rd</sup> Judicial District Court.

40. For example: Recorded on April 15, 2008, in the Harris County Real Property Records is a Deed of Trust for lender Dimension Texas Mortgage Co., securing a money purchase loan in the amount of \$205,500.00 to Catrice Henry, and Albert Perry III, on April 10, 2008, to funded their purchase price for a lot of land with improvement in Miramar Lake.

41. Beginning in June of 2008, the Perry’s began making monthly mortgage payments for lender Dimension Texas Mortgage Co., to servicer J.P. Morgan Chase.

42. Sometime in the year of 2012, Catrice Henry, and Albert Perry III, servicer J.P. Morgan Chase, offered to refinance lender Dimension Texas Mortgage Co., money

purchase loan in the amount of \$205,500.00, to lower interest rate.

43. On June 19, 2012, J.P. Morgan Chase Bank N.A. f/k/a Chase Home Finance LLC., recorded a "Release of Lien" in Harris County Real Property Records, Texas under clerks file no. 20120270134, which recites that in "consideration of the payment in full, according to the face and terror thereof, of a certain promissory note in the original principle sum of \$205,500.00 payable to Dimension Texas Mortgage Inc., this lien has been released."

44. Years after the 2008 closing of Dimension Texas Mortgage Inc., money purchase loan and J.P. Morgan Chase refinance. Sometime around the year of 2016, Mr. Perry ran into a Mr. Jay Stoneburner the mortgage broker/owner of f/k/a Dimension Texas Mortgage Co., and thanked him for the money purchase loan in the amount of \$205,500.00.

45. Mr. Jay Stoneburner clarified in writing that his mortgage company Dimension Texas Mortgage Co., never advance any cash funds in the amount of \$205,500.00, to fund the Perry's purchase price with any advance cash purchase money loan on or before April 10, 2008, and has never received any cash from J.P. Morgan Chase, as repayment for any promissory note. When in fact none of these transactions ever transpired.

46. Mr. Perry example is just one in a million and just as J.P. Morgan Chase manufactured fake refinance loan documents to refinance a purchase money loan for Dimension Texas Mortgage Co. that was NEVER funded and thereafter recorded a fake release of lien under the false pretense that CHASE had paid Dimension Texas Mortgage Co. Now J.P. Morgan Chase together with his cohort PCF., has manufactured a fake

March 3, 2020, foreclose sale of said property when in fact said property was already sold and removed from the auction list.

48. On March 3, 2020, the property at issue was sold at a foreclosure auction at 10:07 a.m., and the deed transferring title was recorded in the property records at 11:50 a.m. Anna Sewart was notified at 12:00 p.m., that the property at issue had already been sold and the deed as been recorded as such the property has been removed from the auction as it cannot be sold twice. Anna Sewart at 12:38 p.m., alleges to have sold the same said property that was already sold at 10:07 a.m and conveyed title to said property on March 13, 2020, when title was already conveyed on March 3, 2020.

49. J.P. Morgan Chase has fabricated this fake sale via PCF and at no time did CHASE withdraw its proof of claim in the bankruptcy court on or after March 3, 2020, on the grounds that the claim has been satisfied via foreclosure instead CHASE continue to litigate that the debtor Thomas plan does not provide for payment to CHASE.

#### V. Removal under 28 U.S.C. §1452

50. Debtor Elizabeth Thomas, has filed this notice of removal seeking enforcement of her confirmation order and the bankruptcy automatic stay, and that U.S. Bankruptcy Court for the Southern District of Texas transfer this case to the U.S. District Court for the Southern District of New York where her chapter 13 bankruptcy case is pending under cause No. 18-23676.

51. On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. §1412, except as provided in Rule 7019(2).

52. The 80<sup>th</sup> Judicial District Court, Harris County, Texas case may be removed to pursuant to 28 U.S.C. §9027(a)(2) and 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title 28 U.S.C.A. § 1452(a).

53. Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court *has jurisdiction to transfer this case to* the U.S. District Court for the Southern District of New York where Debtor Thomas chapter 13 bankruptcy case is pending as that Court has original jurisdiction over all civil proceedings "arising under title, or arising in or related to cases under Title 11." 28 U.S.C. § 1334(b); and pursuant to 28 U.S.C. §9027(a)(2).

54. The Defendants have asserts a claim against the Debtor, and this claim necessarily implicates the bankruptcy claims allowance process and is therefore constitutionally as well as statutorily "core" within the Supreme Court's recent ruling in **Stern v. Marshall**, 131 S. Ct. 2594 (2011).

55. More importantly allowing the Defendants to relitigate the same claims already adjudicated outside of the bankruptcy court would interfere with the Debtor fresh start under the Bankruptcy Code.

56. The Defendants have also filed their “Motion to Lift the Bankruptcy Automatic Stay” in the wrong court, only a bankruptcy court can lift the bankruptcy automatic stay for good cause.

57. The 80<sup>th</sup> Judicial District Court Harris County, Texas, case entitled *Robert L. Thomas, James Allen and Allan Haye vs. PCF Properties of Texas LLC*, on behalf of *Flagstone Lending Group a Non-Existent Utah Corporation and J.P. Morgan Chase Bank N.A. (“PCF”) Elizabeth Thomas and J.P. Morgan Chase Bank N.A.* under cause No. 2020-35780 . is directly related to Debtor's Thomas Bankruptcy Case within the meaning of 28 U.S.C. § 1334 because the claims for relief asserted by the J.P. Morgan Chase and PCF **are the same exact claims that have already litigated** against the debtor in the bankruptcy court and is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

#### IV. MOTION TO TRANSFER VENUE TO NEW YORK

58. The Defendant Elizabeth Thomas, seeks a transfer of this case to U.S. Federal District Court for the Southern District of New York, where her Chapter 13 bankruptcy case is currently pending in the U.S. Bankruptcy Court for the Southern District of New York, White Plains Division under cause No. 18-23676.

59. . Upon removal, to U.S. Federal District Court for the Southern District of New York, White Plains Division, the proceeding will be a "core" proceeding pursuant to 28

U.S.C. §157(b)(2)(A), (B) and (o), as the Defendants seek to lift the bankruptcy stay.

60. . Transfer to U.S. Federal District Court for the Southern District of

New York; is the proper court in which has jurisdiction over this remove this action

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pursuant to 28 U.S.C. § 1452 and FRBP 9027, and the bankruptcy court has nationwide jurisdiction over parties within the United States.

## V. ADOPTION AND RESERVATION OF DEFENSES

61. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) arguments that venue is improper; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available.

**WHEREFORE**, the Debtor Elizabeth Thomas hereby removes the case entitled *James Allen , Robert L. Thomas and Allan Haye vs. PCF Properties of Texas LLC., on behalf of Flagstone Lending Group a Non-Existent Utah Corporation and J.P. Morgan Chase Bank N.A. ("PCF") Elizabeth Thomas and J.P. Morgan Chase Bank N.A.*, from the 80<sup>th</sup> Judicial District Court, Harris County Texas Cause No. 2020-35780 to the **United States District Court for the Southern District of Texas; Houston Division** for transfer to the U.S. Bankruptcy Court for the Southern District of New York; White Plains Division pursuant to 28 U.S.C. § 1452 and FRBP.

Respectfully submitted,

/s/Elizabeth Thomas  
Elizabeth Thomas Self Represented  
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### CERTIFICATE OF SERVICE

This is to certify that the foregoing filing of Notice of Removal was served on the parties below Via the United States Post Office mail on the 7<sup>th</sup> day of March 2022, postage prepaid thereon and email to:

Barry & Sewart PLLC  
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CORPORATION AND SUCESSOR J.P..  
MORGAN CHASE BANK N.A**

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**ATTORNEY FOR ALLAN HAYE**

/s/Elizabeth Thomas

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**Cause No. 2017-76078**

JAMES ALLEN ALVIN MULLEN et al	§	IN THE
<i>Third Party Plaintiffs</i>	§	
	§	
vs.	§	333 <sup>rd</sup> JUDICIAL DISTRICT COURT
	§	
MTH LENDING GROUP LP , et al	§	HARRIS COUNTY, TEXAS
MICHAEL J. PIZZITOLA JR. et al	§	
<i>Third Party Defendants</i>	§	

**AMENDED NOTICE REMOVAL**

PLEASE TAKE NOTICE THAT, that on March 9, 2022, ALVIN R. MULLEN, et al., filed a d Notice of Removal, pursuant to 28 U.S.C. § 1332 1441 and 1446, removing the case from the 333<sup>rd</sup> District Court Harris County to the United States Federal District Court of the Southern District of Texas; Houston Division into cause no. 22-742.

This court shall proceed no further in this action unless and until the case is remanded pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Removal is attached hereto as **Exhibit 1**.

Respectfully submitted,

**COLLEEN M. McCLURE**  
**ATTORNEY AT LAW**

By: /s/ Colleen M. McClure  
**COLLEEN M. McCLURE**

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading has been furnished to counsel of record in accordance with the Texas Rules of Civil Procedure, this 9th day of March 2022.

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**ATTORNEYS FOR STEWART TITLE COMPANY AND MARY LESTER**

By: /s/ Colleen M. McClure

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**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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 Status as of 3/9/2022 12:30 PM CST

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Brook Lee		lee9brook@yahoo.com	3/9/2022 12:11:58 PM	SENT
Dale M. "Rett"Holiday		holidayefile@germer.com	3/9/2022 12:11:58 PM	SENT
Sidney Perkins		sperkins@coatsrose.com	3/9/2022 12:11:58 PM	SENT
Elizabeth Thomas		Tethomas3@aol.com	3/9/2022 12:11:58 PM	SENT
James M.Andersen		jandersen.law@gmail.com	3/9/2022 12:11:58 PM	SENT
Rebecca Brite		Rebecca_Brite@justex.net	3/9/2022 12:11:58 PM	SENT
Marilyn Burgess		m.burgess@hcdistrictclerk.com	3/9/2022 12:11:58 PM	SENT

## EXHIBIT-1

**UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Alvin R. Mullen II, et al  
***Third Party Plaintiffs***

Vs.

MTH Lending Group L.P., et al  
Michael J. Pizzitola Jr., et al  
***Third Party Defendants***

22 CIV-742

Formerly in the 333<sup>rd</sup> District Court  
Harris County Texas, wrongfully listed as  
Cause No. 2017-76078; instead of No. 2016-879421

This case is related to In re Elizabeth Thomas  
in the U.S. Bankruptcy Court for the Southern  
of New York: White Plains Division Chapter 13  
Case No. 18-23676.

**NOTICE OF REMOVAL**

Alvin R. Mullen hereby files this “**Notice of Removal**” to remove the above-entitled action to the U.S. District Court for the Southern District of Texas Houston Division for transfer of venue to U.S. District Court for the Southern District of New York; White Plains Division as follows:

**I. BACKGROUND FACTS**

**A. FEDERAL COURT REMAND ORDER:**

1. On March 18, 2018, Elizabeth Thomas removed the parent case *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association* under cause No. 2016-879421 (collectively *Miramar Lake Homeowners Association vs. Elizabeth Thomas* cause No. 2017-04089), from the 333<sup>rd</sup> Judicial District Court, Harris County, Texas to the U.S. District Court Southern District of Texas; Houston Division into Case No. 18-0851.

2. At time the case entitled *James Allen, et al vs. MTH Lending Group L.P.*, cause No. 2017-76078, was docketed in the 234<sup>th</sup> District Court Harris County, Texas, and Primary Residential Mortgage, Inc., Meritage Homes Corporation, Meritage Homes of Texas, LLC, MTH Lending Group L.P., Stewart Title Company, and Mary Lester’s (the “Defendants”) fought through multiple filings in the 234<sup>th</sup> District Court because Ms. Thomas removed the case to federal court

while their “Motion to Consolidate” *James Allen, et al vs. MTH Lending Group L.P.*, cause No.2017-76078, with the case entitled *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association* under cause No. 2016-879421 (collectively *Miramar Lake Homeowners Association vs. Elizabeth Thomas cause No. 2017-04089*), was pending in the 333<sup>rd</sup> Judicial District Court was pending.

3. The Defendants filed a “Motion to Consolidate” arguing that the case was in the wrong court 234<sup>th</sup> District Court, because the Plaintiffs had previously filed the same said claims in the 333<sup>rd</sup> District Court and non-suited them arguing under Texas Local Rule 3.2.2 *Prior filings*. This rule clearly states that any matter filed after a non-suit, dismissal for want of prosecution, or other disposition of a previous filing involving substantially-related parties and claims shall be assigned by the Administrative Judge of the Civil Trial Division to the court where the prior matter was pending.

4. The Defendants demanded that the 234<sup>th</sup> District Court Judge, and/or Administrative Judge and Clerks of Court consolidated said case with *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association* under cause No. 2016-879421 (collectively *Miramar Lake Homeowners Association vs. Elizabeth Thomas cause No. 2017-04089*), which was pending in the 333<sup>rd</sup> Judicial District Court, Harris County Texas, under cause No. 2016-87941 (the “HOA”).

5. As a direct result, the 234<sup>th</sup> District Court Judge refused to hear any counsel’s motions, claims for temporary relief, or set hearing citing that the case was in the wrong court and was to be transferred and/or consolidated to the *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association* case pending in the 333<sup>rd</sup> Judicial District Court, Harris County Texas, with cause No. 2016-87941.

6. On April 16, 2018, Ms. Thomas filed a “Motion for Leave to file Supplemental Counterclaims and/or Third-Party Complaint” before the Honorable Judge David Hittner, on the grounds that since March 18, 2018, removal of the case entitled *Perez Maria Dejesus et al. vs. Miramar Lake Homeowners Association* under cause No. 2016-879421, from the 333<sup>rd</sup> District Court case to Federal Court, as Counsel has been unable to obtain any relief in the 234<sup>th</sup> District Court. Counsel demonstrated she cannot file motions, set hearings, file emergency restraining orders, or seek protection orders before the court. Instead, Counsel has had to file whole new lawsuits on the same issues that are pending and just sitting in the 234<sup>th</sup> District Court. Counsel has had to re-file several other lawsuits pleading the same claims in the 234<sup>th</sup> District Court in order to obtain restraining orders.

7. The Motion sought leave to file the claims pending in 234<sup>th</sup> District Court in the case entitled *James Allen et al., vs. MTH Lending Group L.P.*, under cause No. 2017-76078, as a supplemental counterclaim and/or third-party claims as a means to add additional parties in Federal Court case as it appears from the record that the Plaintiffs had no other remedy at law or equal access to the courts to pursue said claims.

8. On May 9, 2018, the Honorable Judge David Hittner, granted motion to add the claims and additional parties before the 234<sup>th</sup> Judicial District Court, under cause No. 2017-76078, as additional third-party claims and/or as a supplement Counter/Claims in Federal court.

9. On June 5, 2018, Ms. Thomas filed a “Notice of Removal” removing the case entitled *James Allen, et al vs. MTH Lending Group L.P.*, under cause No. 2017- 76078; from the 127<sup>th</sup> District Court, Harris County, Texas to U.S. District Courts for the Southern

District of Texas; Houston Division **into** Case No. **18-0851; with** Miramar Lake and the 127<sup>th</sup> District Court thereafter docketed this case as **final** and **disposed of**.

10. On June 6, 2018, Thomas filed a “Notice of Removal” removing the case entitled *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, under caused No. 2017-82388; from the 127<sup>th</sup> District Court, Harris County, Texas **to** U.S. District Courts for the Southern District of Texas; Houston Division **into** Case No. **18-0851; with** Miramar Lake case; and the 127<sup>th</sup> District Court Clerk, docketed this case as **final** and **disposed of**.

11. On June 21, 2018, Ms. Thomas filed Amended both “Notices of Removals” to cure any defects of said notice of removals within 30 days. A removal petition may be amended freely within the thirty-day period set forth in 1446(b).<sup>1</sup>

12. On June 25, 2018, the Honorable Judge David Hittner, U.S.D.J., granted the *Miramar Lake Homeowners Association Inc., vs. Elizabeth Thomas (collectively Maria Dejesus Perez et al., vs. Miramar Lake Homeowners Association Inc.)* under 2016-87942 “Motion to Remand” and all of the state court cases entitled *James Allen et al., vs. MTH Lending Group L.P., et al.*, 2017-76078 and *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, 2017-82388 (Consolidated via Third Party Compliant) (the “851 Cases”) to the 333<sup>rd</sup> District Court, Harris County, Texas.

13. Honorable Judge David Hittner, U.S.D.J., consolidated all of the state court case into one docket number **18-0851** and thereafter remanded the 851 one cases to the 333<sup>rd</sup>

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1. *Alford v. Chevron U.S.A. Inc.*, No. 13-5457, 2014 WL 37600, at \*6 (E.D. La. Jan. 6, 2014) (internal quotation marks omitted); accord *Wilson v. Int’l Bus. Machs. Corp.*, No. 3:11-cv-944-G, 2011 WL 4572019, at \*2 (N.D. Tex. Oct. 3, 2011).

District Court, Harris County, Texas, into cause No. 2016-87942 as single case.

## II. STATE COURT JUDGE ISSUES ITS OWN REMAND ORDER

14. Pursuant to 28 U.S.C. § 1446(d), a state court itself is not involved in the removal process upon the filing a notice of removal state court is **divested of jurisdiction** and clearly **prohibits** state courts from taking any action on the removed case. See, e.g., *Murray v. Ford Motor Co.*, 770 F.2d 461, 463 (5th Cir. 1985); the express language of 28 U.S.C. § 1446(d) directs the state court to “proceed no further unless and **until the case is remanded.**”

### c. The 127<sup>th</sup> State Court “Takes Action” and Issues its own “Remand Orders” Remanding the Cases “Removed to Federal Court” back to State Court.

15. On June 11, 2018, Stewart Title Company, filed “Objection to Notice of Removal to Federal Court” which is (a “Motion to Remand”), into the 127<sup>th</sup> District Court in the removed “**closed**” and “**disposed**” case entitled *James Allen, et al vs. MTH Lending Group L.P.*, under cause No. 2017-76078; arguing that the notice of removal was procedurally defective pursuant to Section 1447(c) Stewart sought state court to remand the case, back from federal court to the 127<sup>th</sup> District Court.

16. On June 11, 2018, the Meritage Parties filed “Objection to Notice of Removal to Federal Court” which is again a “Motion to Remand”, in 127th District Court in the removed “**closed**” and “**disposed**” case entitled *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, under caused No. 2017-82388, arguing that the notice of removal is procedurally defective pursuant to Section 1447(c) and sought the state court to remand the case back from federal court to the 127<sup>th</sup> District Court.

17. On June 18, 2018, the 127<sup>th</sup> District Court held “Status Conference” hearing in the

closed and disposed cases entitled *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, under caused No. 2017-82388, and *James Allen, et al vs. MTH Lending Group L.P.*, under cause No. 2017-76078 with only the opposing counsel in attendance. The Court thereafter granted both “Remand Motions” by signing their orders purporting to remand both cases from federal district court back to the 127<sup>th</sup> District Court.

18. This 127<sup>th</sup> district state court remand order is a legal impossibility. Orders granting remand motions back to state court are “dispositive” and can only be granted by a Federal Court. See *Vogul v. U.S. Office Prods. Co.*, 258 F.3d 569, 515 (6th Cir. 2001) (holding that remand orders are “dispositive” and can only be entered by a federal Court because “a remand motion has the same functional effect as dispositive motions enumerated in § 636(b)(1)(A)”); *In re U.S. Healthcare*, 159 F.3d 142, 146 (3rd Cir. 1998) (holding that a remand order is dispositive because it “**banishes the entire case from the federal court**”).

19. Moreover 28 U.S.C. § 1446(d), mandates once a case is removed from the state court, only a federal court can restore jurisdiction to the state court by issuing a remand order and having the district of clerk mail said certified copy of order to state court clerk. See 28 U.S.C. § 1447(c) (2012) (“A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court the State court may thereupon proceed with such case.”).

20. There does not exist a certified copy of the order of remand from federal court filed by the clerk of State court in the 127<sup>th</sup> State court remanding cases entitled *James Allen et al, vs. MTH Lending Group L.P., et al.*, under cause No. 2017-76078, and *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, under caused No. 2017-82388; back to the 127<sup>th</sup>

District Court these cases have been closed since June of 2018.

21. In an attempt to cure the 127<sup>th</sup> District Court lack of jurisdiction on November 29, 2018, Stewart Title Company, filed a “Reconsideration Remand Motion” before the Honorable Judge David Hittner U.S.D.J., Southern District Texas and move the court for an order remanding the case entitled *James Allen et al. vs. MTH Lending Group L.P., et al.*, under cause No. 2017-76078 to the 127th Judicial District Court of Harris County, Texas.

22. On November 30, 2018, the Meritage Parties filed a “Reconsideration Remand Motion” before the Honorable Judge David Hittner U.S.D.J., Southern District Texas and move the court for an order remanding the case entitled *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, under caused No. 2017-82388 to the 127th Judicial District Court of Harris County, Texas.

23. On January 31, 2019, the Honorable Judge David Hittner U.S.D.J., denied both Stewart Title Company and the Meritage Parties “Motions to Remand” in cause numbers 2017-76078 and 2017-82388 to the 127<sup>th</sup> District Court as MOOT. Judge Hittner noted in the order that the entire case (the “851 Cases”) were already and previously remanded to the 333<sup>rd</sup> Judicial District Court and no claims or portions of the case were severed.

24. Ms. Thomas filed a “Notice of Removal” in the 333<sup>rd</sup> District Court on January 24, 2019, removing the entire case to the bankruptcy court in New York.

25. The 127<sup>th</sup> District Court continues court proceedings in both of said cases based on its own June 18, 2018, remand order.

### III. ACTIONS OF COUNTY DISTRICT ADMINSTRATIVE CLERKS

26. On July 10, 2020, Alvin R. Mullen, Catrice Henry, and Albert Perry *pro, se* in

error filed a Notice of Removal in the 127<sup>th</sup> District Court, Harris County, Texas, and 333<sup>rd</sup> Judicial District Court, Harris County, Texas, and removed the case consolidated case *Miramar Lake Homeowners Association Inc., vs. Alvin R. Mullen II* cause No. 2016-879421 to the United State District Court for the Southern District of Texas, Houston Division into case No. 19-cv-02486.

27. On November 3, 2020, Judge Charles Eskridge U.S.D.J. of the Southern District of Texas, remanded *Miramar Lake Homeowners Association Inc., vs. Alvin R. Mullen II* to the 127<sup>th</sup> Judicial District Court, Harris County, Texas.

28. At issue is the fact that the case entitled *Miramar Lake Homeowners Association Inc., vs. Alvin R. Mullen II* is a consolidated case with the parent case entitled *Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al*, under cause No. 2016-879421; and this case is not pending in the 127<sup>th</sup> District Court for the Court to reinstate. So instead, on November 13, 2020, the 127<sup>th</sup> District Clerk Carol Williams used Judge Charles Eskridge U.S.D.J., November 3, 2020, remand order issued for the case entitled *Miramar Lake Homeowners Association Inc., vs. Alvin R. Mullen II* to instead reinstate the case *James Allen vs. MTH Lending Group L.P.*, cause No. 2017-76078, and case *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr.*, et al cause No. 2017- 82388 in the 127<sup>th</sup> District Court the caption of the remand order is reproduced below:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MIRAMAR LAKE HOMEOWNERS  
ASSOCIATION INC *et al*,  
Plaintiffs,  
vs.  
ALVIN R. MULLEN II *et al*,  
Defendants.

§  
§  
§  
§  
§

CIVIL ACTION  
NO.  
4:19-cv-02486  
JUDGE CHARLES  
ESKRIDGE

30. Again on June 25, 2018, Honorable Judge David Hittner, U.S.D.J., consolidated the case entitled *James Allen vs. MTH Lending Group L.P.*, and case *Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.*, was consolidated with case entitled *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al.*, into the single cause No. 2016-879421. When actions are consolidated they become merged and are thereafter treated as one suit.” *Perry v. Del Rio*, 53 S.W.3d 818, 825 n.6 (Tex.App.—Austin), pet. dismiss’d, 66 S.W.3d 239 (Tex.2001); see also *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 432 (Tex.App.—Houston [1st Dist.] 2007, no pet.) (when a court consolidates two or more cases, the actions are merged and thereafter proceed as a single action); *Rust v. Tex. & Pac. Ry. Co.*, 180 S.W. 95, 95 (1915).

31. On November 13, 2020, Marilyn Burgess the Harris District Clerk Supervisor of District Clerks Jessica Moir, removed Judge Eskridge U.S.D.J., November 3, 2020, remand order from the 127<sup>th</sup> District Court in the case *James Allen vs. MTH Lending Group L.P.*, and closed and disposed of the case as final. Thereinafter Ms. Moir re-filed the same said remand order in the case entitled *Miramar Lake Homeowners Association Inc., et al., vs Elizabeth Thomas et al.*, cause No. 2016-8794 in the 333<sup>rd</sup> District Court and reinstated

this case instead.

32. In defiance and total disregard of the federal court order, on March 30, 2021, the Law firm of McKinney Taylor PC., whom represents Primary Residential Mortgage Inc., (the “**Defendant**”) filed a “Notice of Filing” pursuant to **Tex. R. Civ. P. 237a** to 127<sup>th</sup> District Clerk Carol Williams, instructed her to re-file the November 3, 2020, remand order and reinstate the case ***James Allen vs. MTH Lending Group L.P.***, in the 127<sup>th</sup> District Court.

33. Tex. R. Civ. P. 237a **does not** provide a procedure for reinstating a case removed to federal court back to state court. **Instead** Tex. R. Civ. P. 237a provides a procedure to give notice to all parties “**after remand**” that case has been remanded.<sup>1</sup>

34. On September 10, 2021, Marilyn Burgess the Harris County District Clerk Assistant Supervisor Jonathan Patton, again removed Judge Eskridge U.S.D.J., November 3, 2020, remand order from the 127<sup>th</sup> District Court in the cases in ***James Allen vs. MTH Lending Group L.P.***, case and **closed disposed of the case as final**. Thereinafter Mr. Patton re-filed the same said remand order back into the case entitled ***Miramar Lake Homeowners Association Inc. vs. Alvin R. Mullen et al*** cause No. 2016-8794 in the 333<sup>rd</sup> Judicial District Court and reinstated this case again instead.

35. The case entitled ***James Allen vs. MTH Lending Group L.P.***, and ***Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.***, cause no. is No. 2016-8794 as these

<sup>1</sup> Tex. R. Civ. P. 237a When any cause is removed to the Federal Court and is afterwards remanded to the state court, the “**plaintiff**” shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. No default judgment shall be rendered against a party in a removed action remanded from federal court if that party filed an answer in federal court during removal.

actions were consolidated they become merged and are thereafter treated as one suit on June 25, 2018, into the case entitled ***Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al***, under single cause No. 2016-879421, and have no separate existence in and of itself. The record shows that the 127<sup>th</sup> Court improperly reinstated these cases themselves.

#### IV. BANKRUPTCY COURT REMAND ORDER

36. On June 25, 2018, when the Honorable Judge Hittner U.S.D.J., remanded the case ***Miramar Lake Homeowners Association Inc., et al, vs. Elizabeth Thomas et al,*** and the (Parent HOA Case ***Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al***, under cause No. 2016-879421 (the Parent Case); ***James Allen et al, vs. MTH Lending Group L.P., et al*** and ***Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al*** (the “851 Cases”) to the 333<sup>rd</sup> District Court, Harris County, Texas.

37. On January 24, 2019, Debtor Elizabeth Thomas filed a “Notice of Removal” pursuant to 28 U.S.C. § 1452(a) and Federal Rule of Bankruptcy Procedure 9027(c)<sup>2</sup> in the 333<sup>rd</sup> District Court, and removed the cases ***Miramar Lake Homeowners Association Inc., vs. Elizabeth Thomas et al,*** (collectively ***Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al***, under cause No. 2016-879421 (the “851 Cases”) from the 333<sup>rd</sup> District Court, Harris County, Texas, to the United States Bankruptcy Court for the Southern District of New York; White Plains Division into case No. 18-23676.

38. On October 27, 2021, Co-Debtor Alvin M. Mullen III, filed a “Motion to Remand” the ***Miramar Lake Homeowners Association Inc., et al, vs. Alvin R. Mullen II., et al.*** collectively ***Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et.***

*al*, under cause No. 2016-879421 (the “851 Cases”) back to the 333<sup>rd</sup> Judicial District Court, Harris County, Texas, the United States Bankruptcy Court for the Southern District of New York; White Plains Division into cause No. 18-23676.

39. On January 13, 2022, the Honorable Judge Lane, U.S.B.J., signed a remand order remanding the ***Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.*** (collectively ***Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al***, under cause No. 2016-879421 and (the “851 Cases”), to the 333<sup>rd</sup> Judicial District Court, Harris County, Texas and *whatsoever these claims are pending as the bankruptcy court has nationwide jurisdiction*. Including any claims or causes of action of the bankruptcy estate if any pending in the 127<sup>th</sup> District Court.

40. Mr. Mullen sought to serve the 127<sup>th</sup> Court with a copy of January 13, 2022, remand order signed the Honorable Judge Lane, U.S.B.J., remanding the ***Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.*** (collectively ***Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al***, (the “851 Cases”), cause No. 2016-879421 to the 333<sup>rd</sup> Judicial District Court, Harris County, Texas.

41. When Mr. Mullen attempted to file into the 127<sup>th</sup> District Court in the case entitled ***Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.*** the 127<sup>th</sup> District Clerk rejected the filing as said case is not pending in the 127<sup>th</sup> Court.

42. Mr. Mullen asked if the case entitled ***Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.*** is not pending in the 127<sup>th</sup> District Court how was the Court able reinstate using said case remand order?

#### IV. ADMINSTRATIVE JUDGE OF CIVIL TRIAL DIVISION

43. On February 14, 2022, Alvin R. Mullen II., filed a request for a “Attraction” to the Administrative Judge of the Civil Trial Division seeking what other courts besides the 333<sup>rd</sup> District Court is the case entitled *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al* docketed in and more specifically Mullen inquired:

- (i) is the case entitled *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al., pending or* docketed in the 127<sup>th</sup> District Court:
- (ii) how was the cases entitled in *James Allen vs. MTH Lending Group L.P.*, allegedly reinstated on March 30, 2021 in the 127<sup>th</sup> District Court via remand order signed for the case entitled *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al*;
- (iii) The Honorable Judge Lane, U.S.B.J., signed a remand order remanding the *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.* back to the 333<sup>rd</sup> District Court.

44. On February 16, 2022, the Administrative Judge of the Civil Trial Division signed a “Transfer Order” transferring the “closed” and “disposed” case entitled *James Allen vs. MTH Lending Group L.P and Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al*, from the 127<sup>th</sup> District Court to the 333<sup>rd</sup> District Court, as separate case and the case wrongfully appears as reinstated. On February 21, 2022, the Administrative Judge “Amended” its order “Attraction Order.” Both orders avers to the case entitled *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al*, under cause No. 2016-879421.

45. This transfer did not address the issues Mr. Mullen had regarding whether the case entitled *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.* is pending in the 127<sup>th</sup> District Court and if so Judge Lane has issued a remand order on

January 13, 2022, remanding this case to the 333<sup>rd</sup> District Court

46. At issue is the fact that both of these cases entitled ***James Allen vs. MTH Lending Group L.P.***, and ***Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al.***, were merged and consolidated on, into the case entitled ***Miramar Lake Homeowners Association Inc., vs. Elizabeth Thomas (collectively Maria Dejesus Perez et al., vs. Miramar Lake Homeowners Association Inc.,)*** and into case no. 2016-87942 in the 333<sup>rd</sup> District Court on June 25, 2018, and is no longer pending in the 127<sup>th</sup> District Court. This is why Marilyn Burgess the Harris County District Clerk s administratively closed the 127<sup>th</sup> District Court as final and disposed and the 127<sup>th</sup> reinstated these cases themselves.

## V. CAUSES OF ACTION

### A. Grounds for Removal

47. Since filing of the case Primary Residential Mortgage, Inc., Meritage Homes Corporation, Meritage Homes of Texas, LLC, MTH Lending Group L.P., Stewart Title Company, and Mary Lester's (the "Defendants"), have been shopping for Court where they exclusively want the pleadings to be heard. As this case is one of the largest mortgage/land fraud ponzi schemes since 2008 when we experience one of the worst financial disaster.

48. As detailed above the defendants have taken improper actions by going to Marilyn Burgess the Harris County District Clerk, by attempting to use a remand order issued for a different case to reinstate another case that is no longer pending in the 127<sup>th</sup> District Court to wit:

*The Defendants argue that on June 18, 2018, the 127th District Court granted their remand motions and remanded these cases **James Allen vs. MTH Lending Group L.P and Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al**, back from federal court to the 127<sup>th</sup> District Court.*

50. The Plaintiffs argue that on June 25, 2018, the Honorable Judge Hittner U.S.D.J., merged and consolidated the cases *James Allen vs. MTH Lending Group L.P and Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al*, with the cases entitled *Miramar Lake Homeowners Association Inc., et, al., vs. Elizabeth Thomas et al.*, and the (Consolidated *Perez Maria Dejesus et al, vs. Miramar Lake Homeowners Association et. al*, under cause No. 2016-879421) (the “851 Cases ”and remanded all of them to the 333<sup>rd</sup> District Court as a single case; and only a federal court can issue a remand order.

51. On January 24, 2019, Debtor Elizabeth Thomas filed a “Notice of Removal” pursuant to 28 U.S.C. § 1452(a) and Federal Rule of Bankruptcy Procedure 9027(c) in the 333<sup>rd</sup> District Court, and removed the 851 cases from the 333<sup>rd</sup> District Court to Bankruptcy Court for the Southern District of New York; White Plains Division into case No. 18-23676; and on September 16, 2021, Alvin M. Mullen III, also filed a notice of removal in both the 333<sup>rd</sup> District Court and the 127<sup>th</sup> District Court.

52. On January 13, 2022, the Honorable Judge Lane, U.S.B.J., granted Mr. Mullen and remanded the 851 cases back to the 333<sup>rd</sup> District Court. However, denied Mr. Mullen motion to lift the bankruptcy stay.

53. On February 18, 2022, the Defendants have filed pleadings in state court before the Administrative Judge Beau Miller and in the 127<sup>th</sup> District Court “Objecting to the Honorable Judge Lane remand Order” just as with the Honorable Judge Hittner U.S.D.J.

54. Defendants have filed pleadings with Administrative Judge Beau Miller in state court, seeking an order that alters, modify or completely ignores the Honorable Judge Lane, U.S.B.J., January 13, 2022 remand order to the 333<sup>rd</sup> District Court and the bankruptcy stay.

55. Defendants have unbelievably set a hearing on their pleadings “Objection to Remand Order” for March 10, 2022, by filing in the cases entitled *James Allen vs. MTH Lending Group L.P and Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al*, that on September 10, 2021, closed and disposed of by Marilyn Burgess the Harris County District Clerk as these cases are no longer pending in the 127<sup>th</sup> District Court since June 25, 2018.

56. Alvin R. Mullen II, seeks enforcement of the bankruptcy Court January 13, 2022 remand order and that Primary Residential Mortgage, Inc., Meritage Homes Corporation, Meritage Homes of Texas, LLC, MTH Lending Group L.P., Stewart Title Company, and Mary Lester’s (the “Defendants”), be found in contempt of court and sanctioned under section 105(a), for attempting to collaterally attack a bankruptcy court order in state court.

57. Alvin R. Mullen II, seeks enforcement of the bankruptcy Court January 13, 2022, bankruptcy court bankruptcy stay and that the Defendants be sanction for violation of Section 362(a)(3) addresses acts “to exercise control over property of the estate,” including causes of action. 11 U.S.C. § 362(a)(3); *In re Nat’l Century Fin. Enter., Inc.*, 423 F.3d at 577-78 (citation omitted).

57. **Damages:** Alvin R. Mullen has suffered actual damages, including, costs and attorneys’ fees.

#### IV. Removal under 28U.S.C. §1452

58. Alvin R. Mullen , has filed this notice of removal seeking enforcement of the bankruptcy Court January 13, 2022, remand order and enforcement of the bankruptcy automatic stay, and that U.S. Bankruptcy Court for the Southern District of Texas transfer this case to the U.S. District Court for the Southern District of New

York where her chapter 13 bankruptcy case is pending under cause No. 18-23676.

59. On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. §1412, except as provided in Rule 7019(2).

60. The 333<sup>rd</sup> Judicial District Court, Harris County, Texas case may be removed to pursuant to 28 U.S.C. §9027(a)(2) and 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

61. Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court ***has jurisdiction to transfer this case to*** the U.S. District Court for the Southern District of New York where the bankruptcy case is pending as that Court has original jurisdiction over all civil proceedings "arising under title, or arising in or related to cases under Title 11." 28 U.S.C. § 1334(b); and pursuant to 28 U.S.C. §9027(a)(2).

62. The Defendants have filed their "Motions for Reconsideration of Remand Order" in the wrong court, namely a state court that completely lacks jurisdiction to hear remand order or consider remand order.

63. The Defendants have taken these action seeking a state court judge to ignore,

disregard, and alter or modify the January 13, 2022 remand order and an order denying lifting the bankruptcy automatic stay; therefore, the bankruptcy proceeding is constitutionally as well as statutorily “core” within the Supreme Court’s recent ruling in **Stern v. Marshall**, 131 S. Ct. 2594 (2011).

64. The 333rd Judicial District Court Harris County, Texas, closed and disposed of case a (shell case) for which the defendants seeks to proceed in entitled *James Allen vs. MTH Lending Group L.P and Elizabeth Thomas et al, vs. Michael P Pizzitola Jr., et al*, is directly related to a Bankruptcy Case within the meaning of 28 U.S.C. § 1334 and is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

#### IV. MOTION TO TRANSFER VENUE TO NEW YORK

65. The Defendant Alvin R. Mullen II, seeks a transfer of this case to U.S. Federal District Court for the Southern District of New York, where bankruptcy case is currently pending in the U.S. Bankruptcy Court for the Southern District of New York: White Plains Division under cause No. 18-23676.

66. Upon removal, to U.S. Federal District Court for the Southern District of New York; White Plains Division, the proceeding will be a "core" proceeding pursuant to 28U.S.C. § 157(b)(2)(A), (B) and (o). Transfer to U.S. Federal District Court for the Southern District of New York; is the proper court in which has jurisdiction over this remove this action to enforce its orders.

#### V. ADOPTION AND RESERVATION OF DEFENSES

67. Nothing in this Notice of Removal shall be interpreted as a waiver or

relinquishment of the Mr. Mullen rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) arguments that venue is improper; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available.

**WHEREFORE**, the Co-Debtor Alvin R. Mullen hereby removes the cases *James Allen vs. MTH Lending Group L.P and Elizabeth Thomas et al, vs. Michael J. Pizzitola Jr., et al*, from the 333<sup>rd</sup> Judicial District Court, Harris County Texas to the United States District Court for the Southern District of Texas; Houston Division for transfer to the U.S. Bankruptcy Court for the Southern District of New York; White Plains Division pursuant to 28 U.S.C. § 1452 and FRBP.

Respectfully submitted,

**COLLEEN M. McCLURE**  
**ATTORNEY AT LAW**

By: /s/ Colleen M. McClure

**COLLEEN M. McCLURE**

Texas Bar No. 24012121

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Fax. (281) 946-5627

colleen.mcclure@att.net

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing filing of Notice of Removal was served on the parties below Via the United States Post Office mail on the 9<sup>th</sup> day of March 2022, postage prepaid thereon and email to:

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Facsimile: (713) 487-1488  
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***ATTORNEY FOR MERITAGE HOME OF TEXAS, LLC.,***

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***ATTORNEYS FOR STEWART TITLE COMPANY AND MARY LESTER***

By: /s/ Colleen M. McClure

Unofficial Copy Office of Marilyn Burgess District Clerk

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Cause No. 2016-87941

ELIZABETH THOMAS

*PLAINTIFFS*

vs.

MERITAGE HOMES OF TEXAS LLC, F/K/A  
MERITAGE HOMES OF TEXAS LP. F/K/A  
LEGACY MONTEREY HOMES LP. MTH  
LENDING GROUP; PRIMARY RESIDENTIAL  
MORTGAGE INC; STEWART TITLE COMPANY  
MARY ALICE LESTER MERITAGE HOMES  
CORPORATION F/K/A/ MERITAGE  
CORPORATION F/K/A LEGACY MONTEREY  
HOMES LP

*DEFENDANTS*

THIS CASE IS RELATED TO IN RE ELIZABETH  
in the U.S. Bankruptcy Court for the  
Southern District of New York :White  
Plains Division; Chapter 13 Case No.  
18-23676

ELIZABETH THOMAS

*Plaintiffs*

vs.

MERITAGE HOMES OF TEXAS LLC, F/K/A  
MERITAGE HOMES OF TEXAS LP. F/K/A  
LEGACY MONTEREY HOMES LP. MTH  
LENDING GROUP; PRIMARY RESIDENTIAL  
MORTGAGE INC; STEWART TITLE COMPANY  
MARY ALICE LESTER MERITAGE HOMES  
CORPORATION F/K/A/ MERITAGE  
CORPORATION F/K/A LEGACY MONTEREY  
HOMES LP.

*Defendants*

2017- 76078

ELIZABETH THOMAS

*PLAINTIFFS*

vs.

MERITAGE HOMES OF TEXAS LLC., f/ k/a  
MERITAGE HOMES OF TEXAS LP. f/ k/a  
LEGACY MONTEREY HOMES L.P AND  
STEWART TITLE GUARANTY COMPANY

*DEFENDANTS*

2017- 82388

2017- 04089

**MIRAMAR LAKE HOMEOWNERS  
ASSOCIATION**  
*PLAINTIFFS/COUNTER-DEFENDANT*  
VS.  
**ELIZABETH THOMAS, , ET AL.,**  
*DEFENDANT/COUNTER-PLAINTIFF*

---

**NOTICE OF REMOVAL**

Attorney James M. Andersen hereby files this Notice of Removal on behalf of Debtor Elizabeth Thomas removing case styled as Miramar Lake Homeowners Association vs. Elizabeth Thomas under cause No.. 2017- 04089, including the parent case under 2016-87941 and collecting cases 2017, 2017- 76078, and 2017- 82388 TO THE United States Southern District Court of Texas Houston Division for transfer to the United States Southern District Court of New York: White Plains Division case number 18-23676.

**PROCEDURAL BACKGROUND**

1. On March 19,, 2018, Elizabeth Thomas, removed the case styled as Miramar Lake Homeowners Association case from the 333<sup>rd</sup> Judicial District Court, Harris County Texas under cause No. 2017- 04089 to the United States Southern District Court of Texas Houston Division into case number 18-CV-00851.
2. Included with Miramar Lake Homeowners Association case under cause No. 2016-8794, is a Supplemental Original Petition styled as Elizabeth Thomas vs. MTH Lending Group LP., Meritage Homes of Texas LLC., Primary Residential Mortgage Inc., Stewart Title Company, Mary A. Lester and Meritage Homes Corporation.
3. Also pending in the 127<sup>th</sup> District Court Harris County, Texas were the same claims in the case styled as Elizabeth Thomas vs. MTH Lending Group LP., Meritage Homes of Texas LLC., Primary Residential Mortgage Inc., Stewart Title Company, Mary A. Lester and Meritage Homes Corporation under case No. 2017- 76078
4. On or about April 16,, 2018, Elizabeth Thomas, filed a Motion before the Honorable Judge Hittner, U.S.D.J., in case number 18- CV-00851.and moved the court to take supplemental jurisdiction over the claims in the 127<sup>th</sup> District Court Harris County, Texas under case No. 2017-76078m by filing a third party petition and the court granted the motion and the third party petition was filed.
5. On June 5, 2018, Elizabeth Thomas, filed a Notice of Removal removing the case styled as Elizabeth Thomas vs. MTH Lending Group LP., Meritage Homes of Texas LLC.,

Primary Residential Mortgage Inc., Stewart Title Company, Mary A. Lester and Meritage Homes Corporation under case No. 2017-76078, from the 127<sup>th</sup> District Court to U.S. District Court with the Miramar Lake Homeowners Association case under cause No. 18- CV-00851.

6. The Honorable Judge Hittner, U.S.D.J., did not strike the notice of removal.

7. On June 6, 2018, Elizabeth Thomas, filed a Notice of Removal removing the case styled as Elizabeth Thomas vs. *Michael Pizzitola et al.*, from the 127th Judicial District Court, Harris County Texas under cause number 2017-82388 to the United States Southern District Court of Texas Houston Division into case number **18- CV-00851**.

8. The Honorable Judge Hittner, U.S.D.J., did not strike the notice of removal.

9. On June 25, 2018, the Honorable Judge David Hittner, U.S.D.J., granted the *Miramar Lake Homeowners Association Inc.*, Motion to Remand under cause No. ~~2017- 04089~~ and remand the entire docket including cause Nos. 2017-76078 and ~~2017-82388~~ to the to the 333rd District Court, Harris County, Texas under cause No. 2016-8794.

10. On October 29, 2018, (the "Petition Date"), the Debtor Elizabeth Thomas, filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code, 11 (the "Bankruptcy Code") in the United States Bankruptcy Court of the Southern District of New York; White Plains Division into case No. 18-23676.

11. On January 7, 2018, Miramar Lake Homeowners Association filed a "Proof of Claim" as a secured creditor seeking to collect its alleged delinquent yearly assessment fees, interest, and other fees against the debtor Elizabeth Thomas.

12. On January 24, 2029, Debtor Elizabeth Thomas, filed Notice of Removal [invoking 28 U.S.C. § 1452(a), Fed. R. Bankr. P. 9027, and removed the entire case styled as *Miramar Lake Homeowners Association et al vs. Elizabeth Thomas et al.*, (and collecting cases) from the 333<sup>rd</sup> Judicial District Court, Harris County Texas, to the United States Southern District Court of New York: White Plains Division case number 18-23676.

13. On September 16, 2021, the third party plaintiffs Alvin R. Mull II, Albert Perry III and Catrice Henry, *pro se for whatever reason again* filed Notice of Removal invoking 28 U.S.C. § 1452(a), Fed. R. Bank. P. 9027, and sought to removed the case styled as *Miramar Lake Homeowners Association et al vs. Alvin R. Mullen II s et al.*, to the United States Southern District Court of New York: White Plains Division case number 18-23676.

14. On October 26, 2021 the third party plaintiffs Alvin R. Mull II, Albert Perry III and Catrice Henry, filed a Motion to Remand in Debtor Elizabeth Thomas to the United States Southern District Court of New York: White Plains Division case number 18-23676 seeking the Court to Remand the case styled as *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II, et al.* under cause No. **2017- 04089** (*collectively cases* 2016-8794, 2017-76078, 2017-82388 and **18- CV-00851**; banc to to the 333rd Judicial District Court, Harris County, Texas into the Parent case No. 2016-8794..

15. On January 13, 2022, the Honorable Judge Lane, U.S.B.J., signed a remand order remanding the *Miramar Lake Homeowners Association Inc., et al., vs. Alvin R. Mullen II., et al.* under cause No. 2017- 04089 (collectively cases 2016-8794, 2017-76078, 2017-82388 and 18- CV-00851; to the 333rd Judicial District Court, Harris County, Texas into the Parent case No. 2016-8794..

### Grounds for Removal

Each of the Defendants in the cause numbers above, have imitated a “contested matter” in that they do not agree with the Honorable Judge Lane, U.S.B.J., January 13, 2021 order. In that the Court remanded the all of the cases stated in its remand order to the 333<sup>rd</sup> District Court. Accordingly if Judge Lane did not remand said cases back then they are still pending in the .S. District Court for the Southern District of New York in the case styled as In re Elizabeth Thomas under cause No. 18-23676.

### Removal under 28 U.S.C. §1452

Bankruptcy Courts at least in the Second Circuit maintain jurisdiction over their own orders. Debtor Thomas , has filed this notice of removal seeking the U.S. District Court for the Southern District of New York in the case styled as In re Elizabeth Thomas under cause No. 18-23676, to interpret an or enforce its own order

On motion and after a hearing, the court may transfer an adversary or any part thereof to another district pursuant to 28 U.S.C. §1412, except as provided in Rule 7019(2).

The 333<sup>rd</sup> Judicial District Court, Harris County, Texas case may be removed to pursuant to 28 U.S.C. §9027(a)(2) and 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court **has jurisdiction to transfer this case to** the U.S. District Court for the Southern District of New York where if the opposing parties claim that the adversary complaint is still pending as Judge Lane U.S.B.J., never remanded the case back to the 333<sup>rd</sup> District Court, Harris County, Texas. as such that Court has jurisdiction.

### MOTION TO TRANSFER VENUE TO NEW YORK

Debtor Thomas , seeks a transfer of this case to U.S. Bankruptcy District Court for the Southern District of New York, where bankruptcy case although closed the U.S. Bankruptcy

Court for the Southern District of New York: White Plains Division under cause No. 18-23676. Maintains jurisdiction to interpret or enforce its own orders,

Upon removal, to U.S. Federal District Court for the Southern District of New York; White Plains Division, the proceeding will be a "core" proceeding pursuant to 28U.S.C. § 157(b)(2)(A), (B) and (0). Transfer to U.S. Federal District Court for the Southern District of New York; is the proper court in which has jurisdiction over this remove this action to enforce its orders.

**JAMES M. ANDERSEN  
ATTORNEY AT LAW**

By: /s/James M. Andersen

James M. Andersen

Attorney at Law

Texas State Bar No.01165850

P. O. Box 58554

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Tel. (281)488-2800

Fax. (281)480-4851

[jandersen.law@gmail.com](mailto:jandersen.law@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that on April 11, 2024, the foregoing document was served on counsel of record by First Class U.S. Mail, email and again via the Court's CM/ECF system and by First Class U.S. Mail.

By: /s/James M. Andersen

James M. Andersen

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Andersen on behalf of James Andersen

Bar No. 01165850

jandersen.law@gmail.com

Envelope ID: 86539596

Filing Code Description: Notice

Filing Description: NOTICE OF REMOVAL TO FEDERAL COURT(CASE HAS BEE REMOVED)

Status as of 4/11/2024 10:11 AM CST

**Case Contacts**

Name	BarNumber	Email	TimestampSubmitted	Status
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Elizabeth Thomas		Tethomas3@aol.com	4/11/2024 10:00:05 AM	SENT
James Andersen		jandersen.law@gmail.com	4/11/2024 10:00:05 AM	SENT
Elizabeth Thomas		Tethomas3@aol.com	4/11/2024 10:00:05 AM	SENT
Elizabeth Thomas		elizthomas234@gmail.com	4/11/2024 10:00:05 AM	SENT
Heather Razzak		hrazzak@pecklaw.com	4/11/2024 10:00:05 AM	SENT

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Andersen on behalf of James Andersen

Bar No. 01165850

jandersen.law@gmail.com

Envelope ID: 86539596

Filing Code Description: Notice

Filing Description: NOTICE OF REMOVAL TO FEDERAL COURT(CASE HAS BEE REMOVED)

Status as of 4/11/2024 10:11 AM CST

**Case Contacts**

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## CAUSE NO. 2017-76078

MARIA DEJESUS PEREZ, ROBERTO §  
 PEREZ, ELIZABETH THOMAS, JAMES §  
 ALLEN ET AL. §  
 §  
 v. §  
 §  
 MERITAGE HOMES CORPORATION, §  
 F/K/A MERITAGE CORPORATION F/K/A §  
 LEGACY MONTEREY HOMES LP. §  
 MERITAGE HOMES OF TEXAS LLC. §  
 F/K/A MERITAGE HOMES OF TEXAS LP §  
 F/KA LEGACY MONTEREY HOMES LP., §  
 MTH LENDING GROUP, L.P.; PRIMARY §  
 RESIDENTIAL MORTGAGE, INC., MARY §  
 A. LESTER F/K/A MTH TITLE COMPANY, §  
 L.P., STEWART TITLE COMPANY §

IN THE DISTRICT COURT OF  
 HARRIS COUNTY, TEXAS  
 127<sup>TH</sup> JUDICIAL DISTRICT

## ORDER OF CONSOLIDATION

On this day the Court has *sue sponte* determined that three (3) related cases pending in the 127<sup>th</sup> Judicial District Court should be consolidated: Cause No. 2017-76078, Cause No. 2017-82388, and Cause No. 2018-91506. The Court has found that (1) the cases relate to substantially the same subject matter, (2) the same evidence is material, relevant, and admissible in all three cases, (3) consolidation promotes judicial economy and convenience, and (4) consolidation will not result in an unfair trial. It is therefore

ORDERED that Cause No. 2017-82388, *Elizabeth Thomas, et al. v. Michael J. Pizzitola, Jr. et al.*, in the 127<sup>th</sup> Judicial District Court of Harris County, Texas and Cause No. 2018-91506, *Meritage Homes of Texas, LLC, et al. v. Elizabeth Thomas, et al.*, in the 127<sup>th</sup> Judicial District Court of Harris County, Texas be consolidated with Cause No. 2017-76078, *Allen James, et al. v. MTH Lending Group, et al.*, in the 127<sup>th</sup> Judicial District Court of Harris County, Texas, and ORDERS the clerk to note on the docket sheets in all three cases that the cases were consolidated under cause number 2017-76078.

SIGNED: \_\_\_\_\_

Signed:  
1/30/2019



\_\_\_\_\_  
JUDGE PRESIDING

Unofficial Copy Office of Marilyn Burgess District Clerk



IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

A True Copy

Certified order issued Nov 25, 2019

**H-19-CV-559**

United States Courts  
Southern District of Texas  
FILED

November 25, 2019

*Styl W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 19-20437

David J. Bradley, Clerk of Court

PRIMARY RESIDENTIAL MORTGAGE, INCORPORATED; MERITAGE  
HOMES OF TEXAS, L.L.C.,

Plaintiffs - Appellees

v.

ELIZABETH THOMAS,

Defendant

COLLEEN M. MCCLURE, as the legal representative of Catrice Henry,  
Albert Perry, III and Alvin R. Mullen II, and the One Hundred and Forty-  
Five Interested Parties (hereinafter collectively All of the "Parties"),

Appellant

Appeal from the United States District Court  
for the Southern District of Texas

Before HIGGINBOTHAM, SOUTHWICK, and WILLETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellant's opposed motion to dismiss the appeal pursuant to FRAP 42 is GRANTED.

IT IS FURTHER ORDERED that appellees' opposed motion for damages and double costs is GRANTED. Appellees are awarded the attorneys' fees set out in their motion and \$48.60 in costs.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

November 25, 2019

Mr. David J. Bradley  
Southern District of Texas, Houston  
United States District Court  
515 Rusk Street  
Room 5300  
Houston, TX 77002

No. 19-20437      Primary Residential Mortgage, et al v.  
Elizabeth Thomas  
USDC No. 4:19-CV-559

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

*Dawn Shulin*

By:

Dawn M. Shulin, Deputy Clerk  
504-310-7658

cc w/encl:

Mr. James Michael Andersen  
Ms. Jennifer Nicole Chang  
Mr. Barry Stephen Rabon

**No. 19-20437**

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PRIMARY RESIDENTIAL MORTGAGE, INCORPORATED,  
MERITAGE HOMES OF TEXAS, L.L.C.

*Plaintiffs-Appellees,*

v.

ELIZABETH THOMAS et al.,

*Defendants,*

v.

COLLEEN M. MCCLURE, as the legal representative of Catrice Henry, Albert Perry, III and Alvin R. Mullen II, and the One Hundred and Forty-Five Interested Parties (hereinafter collectively All of the “Parties”)

*Appellant.*

---

Appeal From the United States District Court  
For the Southern District of Texas, Houston Division  
No. 4:19-cv-00559, Honorable David Hittner, Presiding

---

**THE MERITAGE AND PRMI APPELLEES’  
MOTION FOR DAMAGES AND COSTS**

---

**Kim Altsuler**

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**Barry S. Rabon**

brabon@coatsrose.com

**COATS ROSE, P.C.**

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Facsimile: (713) 651-0220

**ATTORNEYS FOR MERITAGE  
HOMES CORPORATION AND  
MERITAGE HOMES OF TEXAS, L.L.C.**

**Andrew T. McKinney**

Mckinney@mckinneytaylor.com

**Jennifer N. Chang**

chang@mckinneytaylor.com

**MCKINNEY TAYLOR P.C.**

Three Riverway, Suite 900

Houston, Texas 77056

Telephone: (713) 487-1487

Facsimile: (713) 487-1488

**ATTORNEYS FOR PRIMARY  
RESIDENTIAL MORTGAGE, INC.**

TO THE HONORABLE 5<sup>TH</sup> CIRCUIT COURT OF APPEALS:

Appellees Primary Residential Mortgage, Inc. (“PRMI”) and Meritage Homes Corporation and Meritage Homes of Texas, Inc. (“Meritage”) ask the Court to award them damages and costs against Appellant Colleen M. McClure and her attorney James M. Andersen because McClure and Andersen filed a frivolous appeal which forced Appellees to incur significant attorney’s fees and costs.

Appellees have attempted to contact all other parties. No response has been received and Appellees believe an opposition to this motion will be filed.

Appellant has filed a Motion to Dismiss stating that this appeal is moot because the case at issue was closed and disposed of as of January 30, 2019<sup>1</sup>. The Notice of Appeal in this matter was filed on June 20, 2019—five months after the event which Appellant says renders this appeal moot. By Appellant’s own admission, this appeal was moot when it was filed, and therefore was a frivolous appeal.

If a court of appeals determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee. FED. R. APP. P. 38. In addition, an attorney who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs,

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<sup>1</sup> Appellees do not comment on the accuracy of Appellant’s representation that the case was “closed and disposed” as asserted by Appellant.

expenses, and attorneys' fees reasonably incurred because of such conduct. 28 U.S.C. § 1927 (“Counsel’s liability for excessive costs”).

Appellees encourage the Court to review the Statement of the Case in the Brief of the Meritage and PRMI Appellees filed on September 24, 2019, which sets forth the vexatious and harassing conduct by McClure and Andersen over the last several years.<sup>2</sup> McClure, Andersen, and their clients (McClure is Appellant in this case but filed the appeal as the legal representative of various parties) have abused the Court system and prevented any claims or counterclaims from being adjudicated in the numerous lawsuits they have filed. Filing the appeal, waiting until after Appellees incurred the expense of preparing and filing a response, and then moving to dismiss the appeal based on an event that occurred before the appeal was even filed is another example of their vexatious and harassing conduct. The appeal was frivolous, so Appellees should be awarded as damages the attorneys’ fees they needlessly incurred plus double the amount of their costs, to be paid by Andersen and McClure, jointly and severally. *See, e.g., Olympia Co. v. Celotex Corp.*, 771 F.2d 888, 893–94 (5th Cir. 1985) (granting appellees’ requests for expenses, attorneys’ fees, and

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<sup>2</sup> In addition, Andersen, who represents Appellant Elizabeth Thomas (a party who Andersen, McClure, or both have represented in various cases) in another appeal pending before this Court (No. 19-20424), filed an Appellant’s Brief pertaining to the denial of an Emergency Motion (substantially similar to the Emergency Motion at issue in this appeal). *Compare* ROA.19-20437.1054, *with* ROA.19-20424.4378. The Emergency Motion at issue in No. 19-20424 was filed by Elizabeth Thomas **and her prior legal representatives James M. Andersen and Colleen M. McClure**. *See* ROA.19-20424.4378.

double costs jointly against the appellants and their counsel because the appeal was frivolous).

Attached as Exhibits 1 and 2 to this Motion are affidavits of Appellees' attorneys of record supporting an award of the following:

- \$9,282.00 to PRMI for its attorney's fees, plus \$97.20 for double its costs incurred for the appeal.
- \$2,130.00 to Meritage for its attorney's fees.

### **CONCLUSION**

For the reasons set forth above, Appellees request that this Court award Appellees Primary Residential Mortgage, Inc., Meritage Homes Corporation, and Meritage Homes of Texas, Inc. damages and double their costs as prayed for herein, to be paid by James M. Andersen and Colleen M. McClure, jointly and severally.

Respectfully submitted,

/s/ Barry S. Rabon

**Kim Altsuler**

Texas State Bar No. 00796656

kalstuler@coatsrose.com

**Barry S. Rabon**

Texas State Bar No. 00792781

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**ATTORNEYS FOR MERITAGE  
HOMES OF TEXAS, L.L.C.**

/s/ Jennifer N. Chang

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**ATTORNEYS FOR PRIMARY  
RESIDENTIAL MORTGAGE, INC.**

## CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of October, 2019, I electronically filed the foregoing document with the clerk of the court for the United States Court of Appeals for the Fifth Circuit, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to counsel of record, who have consented to electronic service of all documents, and the following:

James M. Andersen  
Attorney At Law  
P. O. Box 58554  
Webster, Texas 77598-8554

/s/ Barry S. Rabon  
Attorney of Record for Plaintiff–Appellee  
Meritage Homes of Texas, L.L.C.

/s/ Jennifer N. Chang  
Attorney of Record for Plaintiff–Appellee  
Primary Residential Mortgage, Inc.

## CERTIFICATE OF COMPLIANCE

1. This motion complies with the length limitation of FED. R. APP. P. 27(d)(2)(A) because this motion contains 634 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f) and 5TH CIR. R. 32.2.

2. This motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and 5TH CIR. R. 32.1 and the type style requirements of FED. R. APP. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman, font size 14, and the footnotes to this motion have been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman, font size 12.

/s/ Barry S. Rabon

Attorney of Record for Plaintiff–Appellee  
Meritage Homes of Texas, L.L.C.

/s/ Jennifer N. Chang

Attorney of Record for Plaintiff–Appellee  
Primary Residential Mortgage, Inc.

Dated: October 2, 2019

**No. 19-20437**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PRIMARY RESIDENTIAL MORTGAGE, INCORPORATED,  
MERITAGE HOMES OF TEXAS, L.L.C.,  
*Plaintiffs-Appellees,*

v.

ELIZABETH THOMAS et al.,  
*Defendants,*

v.

COLLEEN M. MCCLURE, as the legal representative of Catrice Henry, Albert  
Perry, III and Alvin R. Mullen II, and the One Hundred and Forty-Five Interested  
Parties (hereinafter collectively All the “Parties”),  
*Appellant.*

---

Appeal From the United States District Court  
For the Southern District of Texas, Houston Division  
No. 4:19-cv-00559, Honorable David Hittner, Presiding

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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

**Plaintiffs–Appellees (with Counsel)**

**Primary Residential Mortgage, Inc.\***

Andrew T. McKinney IV  
Jennifer N. Chang  
McKinney Taylor P.C.  
Three Riverway, Suite 900  
Houston, Texas 77056

\* Primary Residential Mortgage, Inc. (“PRMI”) a wholly owned subsidiary of Primary Residential Group, Inc., which is a privately held company. There is no parent corporation or any publicly held corporation that owns 10% or more of PRMI’s stock.

**Meritage Homes of Texas, LLC\***

\* The parent corporation of Meritage Homes of Texas, LLC (“Meritage”) is Meritage Homes of Texas Holding, Inc. Meritage Homes Corporation (NYSE: MTH) owns 10% or more of the stock of Meritage Homes of Texas Holding, Inc. BlackRock, Inc. (NYSE: BLK) owns 10% or more of the stock of Meritage Homes Corporation.

Kim G. Altsuler  
Barry S. Rabon  
Coats Rose, P.C.  
9 Greenway Plaza, Suite 1000  
Houston, Texas 77046

**Defendants (with Counsel)**

**Elizabeth Thomas**  
**James Allen**  
**Robert L. Thomas**

James M. Andersen  
Attorney At Law  
P. O. Box 58554  
Webster, Texas 77598-8554  
and

Colleen M. McClure  
 4201 Cypress Creek Parkway  
 Suite 565  
 Houston, TX 77068  
**Appellant (with Counsel)**

**Colleen M. McClure as Legal Representative of Catrice Henry, Albert Perry, III and Alvin R. Mullen II, and the One Hundred and Forty-Five Interested Parties**

James M. Andersen  
 Attorney At Law  
 P. O. Box 58554  
 Webster, Texas 77598-8554

**Non-Parties Interested in the Order Appealed (with Counsel)**

EKL CATHY, L. MILES CHADDOLFORD ROCHELLE & RONALD, BLAYLOCK TERRY, JOHNSON GAYLE N & SHIRLEY P., GARZA-CARR ENEDELIA N., BANKS DAMIAN J., CRUTCHFIELD DURAND F., CAMERINO KENNETH A & TRACEY L., FESTERVAND JERRY R JR., & RHONDA L., ANDERSEN DANIEL & JAMIE., LIGHTNER LAWRENCE & PATRICIA A., BODE JOEL R., LEDESMA LINDA & ZEPEDA RAQUEL., GIBSON ALMA R & GRIFFITH JULIE, PICAR JANETTE R & RICHARD P., KINMAN CONNIE, HERZINGE R ATHENA & TIM., MIKUSH JOE J., WINGERSON SUSAN, BARRAGAN CARLOS & RIVERA LINDA., SCURLOCK KELLY- ANNE & OCTAVIUS., FISHER ANN NELLE & LEE ANN., MILNE JOSHUA PATRICK., BARRAGAN CARLOS & RIVERA LINDA., BENSON DALE L & KIMBERLY S., HODGE BRANDY & RANDOLPH., GREIN JOHNNY M & KIMBERLY, MC LAUGHLIN GREG W., CROWELL SHAWN M., CHRISTINE & CHAN HO K., CUNNINGHAM CRAIG & LINDA, PHAN QUY V., GREEN HERBERT, MULLINS JANIS A., ARCHIE IRIK E. & DANIELS TAMMI J., GARCIA MARY GLORIA & REYNALDO, WHITE DARCY K, & JOE A., OCHOA & SANDRA MARTIN, CIANCIOFFO LEONARD, FRANKLIN DON, EMMONS JO L & LARRY C., CANELON MARIA A., JOHNSON KEVIN, FLORES JOSE, R. FRESQUEZ CARLAMARINA & JUAN M., PILAND DEBORAH L & DOUGLAS C., MILLER ROBERT S. & WENDY W., PIEPER KEVIN & MARY, DYER

ROBERT P. & SANDRA K., DICKEN LORI A & WILLIAM R., REDO JEREMY RYAN, SMITH TEENA S., ROBERTS LAKESIA N., BRINCK MARY DIANE & STEVEN R., PIXTON MARVA V & STEVEN E., TENDER BRADFORD D., DEFFES BRYAN E DENISE Z., BENSON DALE L & KIMBERLY S., CONTER JENNIFER & DONALDSON AARON S, BERTUS AUDREY N & JAMES J., JAMES DONALD W. & MARTHA L., SHIRLEY JOHN D. & SHIRLEY KIM R., LIEURANCE ADANA L & JONATHAN J., MALLON CHARLES, JOHNSON DREAND & PHUONG, MINGS BARBARA C. & LARS G., PICKERING TERESA, CHEATWOOD DANIEL & TERRI, HARRIS CHARDELL & RUSSELL, MIRELES ANNABELL & MIRELES MOSES, SMITH MANON S., REINKEMEYER ERIC D. & REINKEMEYER JILLIAN N., FIRMIN KEVIN A. & LAURA MILANNE, BARNES CAROL & THOMAS PADILLA JOE, DINH NAM THI & NGUYEN QUANG NHUT, RENDON BETTY & RONALD J., JAMES RONNIE & KEYANNA, SEARS EDWIN, HOLGUIN VICTOR, MONTGOMERY RAIT., TORRES DARRELL & NORMA, NAZZAL FRANCIS S., RENDON BETTY & RONALD J ANDERSON JEFFERY & DULWORTH CLINTON & GESSEL ANDREA KENNEDY ANDRION & PARTICK W., EMERSON DEBORAH J & LARRY D, ROBERTO PEREZ, NORTON TONYA, RICHARDS LEE A., FULLER PETER, BRANTLEY TONI, HAUNG SUSAN H., DAVIS DENISE, MOUTON WESLEY., HARTNETT BRIAN C., BRANTLEY TONI., COLLINS PRINCESS DOLORES, JACKSON RAYMOND B., RICHARDSON JERNEANICA, BRUMFIELD STEVEN W & TERESA A, ORTIZ CARMEN C., BARKLEY CARA L & HARKLEY GEORGE F., JOHNSON MAURICE, TAYLOR ALLAN C., CERDA ADRIAN., ALVAREZ FELIX U & ALVAREZ SAGRARIO C, CZARMOPIS TOBY, FREDERICK ANGELA & WILLIAMS JAY P., GARZA MARK, BACA JOSE D., ELIZALDE ANDRES & HEATHER, MACFARLANE ANGELA, GARRETT PARIS LAVAR & WANDA KIM, COUSIN ELONDRA D., ELDER PEGGY & TERENCE, BRAUGHTON RANDY, MELVIN KIM W., ELDER HELEN, HARGROVE SHAMIKA, ARCHER HERMAN, BUTLER PATRICIA B & WILLIAM EDWARD, PLUGUEZ MICHAEL L, JONES BIANCA & FREDDIE, TRAVIS JEFF & JODI, JACKSON CAROLYN, TROSCLAIR KRISTIE L. MENESES PILAR JANE, THOMAS NICOLE & TIMOTHY RIVERA ANGEL ANTONIO & MILDRED, LAQUINDANUM NATHALIE, THOMAS NICOLE & TIMOTHY, RIVERA ANGEL ANTONIO & MILDRED, LAQUINDANUM NATHALIE, BEVERLY CARLA Y., WINGFIELD NAKIA, WHITINGER DOROTHY K., COPELAND RICHARD A., BOB MARC A., SUTHERLAND ANTHONY &

KASSIE, SEVY BOBBIE & DUANE, PORTWOOD ROBERT BLAKE, AMOEDO EDUARDO & MARIA, LLERENAS MIREYA & CESAR, JAMES ALLEN, IWUNDU IKECHUKWU E., MARKEY ANNE MARIE, PORTERFIELD DONNA, KRUSE TODD J & YANG HYANG, IWUNDU EZECHUKWU N., ENARLE PINKY, BARNES ROSHANDA, CURTIS LARRY ALLEN JR., DOD ALMA L & MICHAEL J., ALLEE DAVID W & HEATHER, BASS YVONNE FARRAR.

James M. Andersen  
Attorney At Law  
P. O. Box 58554  
Webster, Texas 77598-8554

and

Colleen M. McClure  
4201 Cypress Creek Parkway  
Suite 565  
Houston, TX 77068

### **Stewart Title Company\***

\* Stewart Title Company (“STC”) is a wholly owned subsidiary of Stewart Title Guaranty Company (“STGC”). STGC is a wholly owned subsidiary of Stewart Information Services Corporation, a publicly traded company (NYSE: STC). No public company has an ownership of 10% or more of Stewart Information Services Corporation.

Scott M. McElhaney  
Jackson Walker L.L.P.  
2323 Ross Ave., Suite 600  
Dallas, Texas 75201

### **Meritage Homes Corporation\***

\* Meritage Homes Corporation is a publicly held corporation (NYSE: MTH). BlackRock, Inc. (NYSE: BLK) owns 10% or more of the stock of Meritage Homes Corporation.

Kim G. Altsuler  
Barry S. Rabon  
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**MTH Lending Group, LP\***

Dale M. “Rett” Holiday  
Germer PLLC  
2929 Allen Parkway, Suite 2900  
Houston, Texas 77019

\* MTH Lending Group, LP is a limited partnership. One of its limited partners, Meritage Homes of Texas, LLC, is a subsidiary of Meritage Homes Corporation, a publicly traded company (NYSE: MTH).

**Mary Lester**

Scott M. McElhaney  
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2323 Ross Ave., Suite 600  
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**Michael J. Pizzitola, Jr.**

**Kevin Meuth**

**David Jordan**

**Rodney B. Howerton**

**David Modlin**

**Jeff Barfield**

**Michael Materna**

**Chris Huebner**

**Melissa Hanna**

Kim G. Altsuler  
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9 Greenway Plaza, Suite 1000  
Houston, Texas 77046

**JPMorgan Chase Bank, N.A.\***

\* JPMorgan Chase Bank, N.A. is a wholly owned subsidiary of JPMorgan Chase & Co., a publicly traded company (NYSE: JPM).

Wm. Lance Lewis  
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Quilling Selander, Lownds, Winslett & Moser, P.C.  
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Dallas, Texas 75201  
and  
Robert W. Griswold  
Law Offices of Shapiro, DiCaro & Barak, LLC  
One Huntington Quandrangle, Suite 3N05  
Melville, New York 11747

**McCarthy & Holthus, LLP\***

\* McCarthy & Holthus, LLP is organized under the laws of the State of California and its partners are citizens of the State of California. McCarthy & Holthus, LLP is not a corporation, does not have a parent corporation, and there is no publicly owned corporation owning 10% or more of its stock.

**Miramar Lake Homeowner's Association\***

\* Miramar Lake Homeowner's Association ("Miramar Lakes HOA") is a domestic nonprofit corporation with its principal place of business in Houston, Texas. Miramar Lakes HOA is a homeowners' association comprised of all of the property owners within the Miramar Lake subdivision. Miramar Lakes HOA has no parent corporation, and no publicly held company owns 10% or more of Miramar Lakes HOA's stock.

Dustin Fessler  
Stephanie Denton  
Roberts Markel Weinberg Butler Hailey PC  
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Sugar Land, Texas 77479

**Allan A. Haye**

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**Colleen M. McClure**

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**James M. Andersen**

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P. O. Box 58554  
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**Maria Dejesus Perez  
Roberto Perez**

Roger G. Jain  
Thomas H. Smith III  
Roger G. Jain & Associates, P.C.  
9301 Southwest Freeway, Suite 250  
Houston, Texas 77074

/s/ Barry S. Rabon  
Attorney of Record for Plaintiff–Appellee  
Meritage Homes of Texas, L.L.C.

/s/ Jennifer N. Chang  
Attorney of Record for Plaintiff–Appellee  
Primary Residential Mortgage, Inc.



**No. 19-20437**

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PRIMARY RESIDENTIAL MORTGAGE, INCORPORATED,  
MERITAGE HOMES OF TEXAS, L.L.C.

*Plaintiffs-Appellees,*

v.

ELIZABETH THOMAS et al.,

*Defendants,*

v.

COLLEEN M. MCCLURE, as the legal representative of Catrice Henry, Albert  
Perry, III and Alvin R. Mullen II, and the One Hundred and Forty-Five Interested  
Parties (hereinafter collectively All of the "Parties")

*Appellant.*

---

Appeal From the United States District Court  
For the Southern District of Texas, Houston Division  
No. 4:19-cv-00559, Honorable David Hittner, Presiding

---

**AFFIDAVIT OF JENNIFER CHANG**

THE STATE OF TEXAS       §

COUNTY OF HARRIS       §

Before me, the undersigned authority, on this day personally appeared  
Jennifer Chang who, after being by me first duly sworn, stated under oath as  
follows:

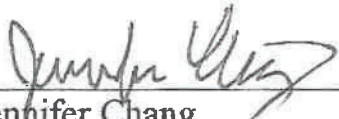
1. "My name is Jennifer Chang. I am over eighteen (18) years of age and I  
have never been convicted of a felony or crime of moral turpitude. I have

personal knowledge of each statement contained in this affidavit and they are true and correct. I am an attorney and have been licensed to practice and practicing law in the State of Texas since 2013. I am an associate with the law firm of McKinney Taylor, P.C. (the "Law Firm"). I practice civil litigation in Harris County, Texas. I am familiar with the type and amount of work involved in a case such as this one, and I am familiar with hourly billing rates typically charged in Harris County, Texas for cases such as this one.


2. "The Law Firm represents Primary Residential Mortgage, Inc. in the above-referenced case.
3. "In connection with this Appeal, my Law Firm spent time reviewing the filings, reviewing the record, strategizing regarding briefing, working on Appellees' Brief, and conferring with my client. In performing this work, I billed a total of 44.2 hours to our client. In my opinion, all of this work was necessary, and the time spent was reasonable.
4. "I am familiar with the usual and customary rates charged by attorneys in Houston, Harris County, Texas for litigation of this kind and scope. In considering reasonable hourly rates, I take into consideration such things as the experience, reputation, and ability of the attorneys, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly, the nature of the controversy, dollar amount involved, and the Firm's relationship with the client. In my opinion, a reasonable hourly rate for my time is \$210.00 per hour. As such, a reasonable fee for the work I performed in the previous paragraph is \$9,282.00.

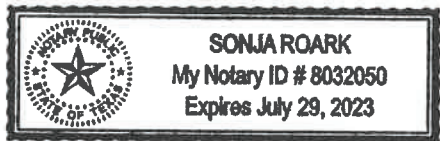
5. My client also incurred photocopy costs in connection with this appeal in the amount of \$48.60. This amount is, in my opinion, reasonable and necessary and customary.

Further affiant sayeth not.

  
\_\_\_\_\_  
Jennifer Chang

SUBSCRIBED AND SWORN TO before me the undersigned authority, on this the 2nd day of October, 2019 by Jennifer Chang.

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



**No. 19-20437**

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PRIMARY RESIDENTIAL MORTGAGE, INCORPORATED,  
MERITAGE HOMES OF TEXAS, L.L.C.

*Plaintiffs-Appellees,*

v.

ELIZABETH THOMAS et al.,

*Defendants,*

v.

COLLEEN M. MCCLURE, as the legal representative of Catrice Henry, Albert  
Perry, III and Alvin R. Mullen II, and the One Hundred and Forty-Five Interested  
Parties (hereinafter collectively All of the “Parties”)

*Appellant.*

---

Appeal From the United States District Court  
For the Southern District of Texas, Houston Division  
No. 4:19-cv-00559, Honorable David Hittner, Presiding

---

**AFFIDAVIT OF KIM ALTSULER**

THE STATE OF TEXAS       §

COUNTY OF HARRIS       §

Before me, the undersigned authority, on this day personally appeared Kim  
Altsuler who, after being by me first duly sworn, stated under oath as follows:

1. “My name is Kim Altsuler. I am over eighteen (18) years of age and I  
have never been convicted of a felony or crime of moral turpitude. I have  
personal knowledge of each statement contained in this affidavit and they

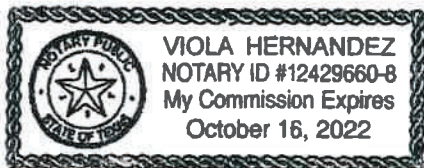
are true and correct. I am an attorney and have been licensed to practice and practicing law in the State of Texas since 1996. I am Of Counsel with the law firm of Coats Rose, P.C. (the “Law Firm”). I practice civil litigation in Harris County, Texas. I am familiar with the type and amount of work involved in a case such as this one, and I am familiar with hourly billing rates typically charged in Harris County, Texas for cases such as this one.

2. “The Law Firm represents Meritage Homes of Texas, LLC and Meritage Homes Corporation in the above-referenced case.
3. “In connection with this Appeal, my Law Firm spent time reviewing the filings, reviewing the record, strategizing regarding briefing, working on Appellees’ Brief, and conferring with my clients. In performing this work, I billed a total of 6.1 hours to our client and my paralegal billed a total of 2.5 hours. In my opinion, all of this work was necessary, and the time spent was reasonable.
4. “I am familiar with the usual and customary rates charged by attorneys in Houston, Harris County, Texas for litigation of this kind and scope. In considering reasonable hourly rates, I take into consideration such things as the experience, reputation, and ability of the attorneys, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly, the nature of the controversy, dollar amount involved, and the Firm’s relationship with the client. I am an Of Counsel attorney at the Law Firm who has been in practice for approximately 23 years; in my opinion, a reasonable hourly rate for my time is between \$300.00 and \$350.00 per hour. As such, a reasonable fee for the work I performed as described in the previous paragraph is at least \$1,830.00. A reasonable rate for my paralegal is \$120.00 per hour. As such, a reasonable fee for the work my paralegal performed is \$300.00. The total reasonable fee for myself and my paralegal is \$2,130.

Further affiant sayeth not.

Kim Altsuler  
Kim Altsuler

SUBSCRIBED AND SWORN TO before me the undersigned authority, on this the 2<sup>nd</sup> day of October, 2019 by Kim Altsuler.



Viola Hernandez  
NOTARY PUBLIC, STATE OF TEXAS

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS**

**ELIZABETH THOMAS,**  
*Plaintiff,*

v.

**MERITAGE HOMES OF TEXAS,**  
**Et al.**  
*Defendants.*

§  
§  
§  
§  
§  
§  
§

**ADVERSARY NO.: 24-03066**

**AFFIDAVIT OF GWEN E. RICHARD**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HARRIS     §

Before me, the undersigned authority, on this day personally appeared Gwen E. Richard, who after being by me first duly sworn, stated under oath as follows:

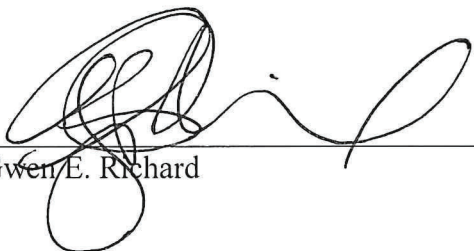
1. “My name is Gwen E. Richard. I am competent to make this Affidavit. I am over eighteen (18) years of age and have never been convicted of a felony or crime of moral turpitude. The facts stated in this Affidavit are within my personal knowledge and are true and correct.
2. I am an attorney and have been licensed to practice and practicing law in the State of Texas since 1989. I am a shareholder with the law firm of Irelan McDaniel, PLLC (the “Law Firm”). I practice civil litigation in Texas, including in Houston and Harris County, Texas. I am board certified in Personal Injury Trial Law. I am familiar with the type and amount of work involved in a case such as this one, and I am familiar with hourly billing rates typically charged in Harris County, Texas, for cases such as this one.
3. My Law Firm represents Primary Residential Mortgage, Inc. (“PRMI”) in the above-referenced case and in connection with all cases prosecuted by Elizabeth Thomas and her Aligned Parties against PRMI. I have been representing PRMI in of these lawsuits for several years.
4. PRMI pays the Law Firm by the hour for work performed on the case and pays all expenses. I have personally performed all the work done by an attorney for PRMI discussed in this Affidavit. Due to the lengthy and complex nature of this case, including the complicated procedural history, it would be more costly to bring an associate up to speed on this case to handle particular tasks at a lower billing rate than it would be for me to perform the task myself. As such, I have personal knowledge of all pleadings, motions, communications,

and other documents involved in this lawsuit and the work performed by the Law Firm on this case.

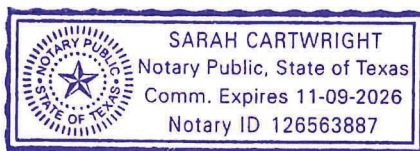
5. I am familiar with the usual and customary rates charged by attorneys in Houston, Harris County, Texas for litigation of this kind and scope. I am familiar with the type and amount of work involved in a case such as this one.
6. In considering reasonable hourly rates, as set forth in *Arthur Anderson Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818–19 (Tex. 1997), citing, TEX. DISCIPLINARY R. PROF. CONDUCT 1.04, the factors that I considered include:
  - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
  - (2) whether the acceptance of the particular employment precluded other employment by the firm;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.
7. In my opinion, based on the above and based on my education, skill, knowledge, and experience as an attorney, a reasonable hourly rate for my time is \$450.00 per hour.
8. In connection with Ms. Thomas's and Mr. Anderson's violations of Court Orders precluding removal, resulting in the proceedings pending before Hon. Judge Isgur, my Law Firm spent time reviewing the filings, reviewing the record, strategizing regarding securing a remand, conferring with our client, conferring with the attorneys for the other affected parties, and attending a hearing on May 1, 2024. In performing this work, I worked a total of 27.1 hours for a total attorney's fee of \$12,195.00. In my opinion, all of this work was necessary, and the time spent was reasonable.
9. Attached to this Affidavit are relevant entries from the Law Firm's contemporaneous time records for work performed as generally described above. These records show the task performed, the amount of time spent on each task, and the total reasonable fee for the task. These records also tally the total reasonable and necessary attorney's fee for the removal and PRMI's motion in the amount of \$12,195.00.

10. In addition, I estimate that the Law Firm will spend 2.8 hours attending the hearing on the Motion for Compensation for a total additional reasonable fee of \$1,260.00.
11. If Ms. Thomas or Mr. Andersen files a response to the Motion for Compensation, I anticipate the Law Firm will spend 3 hours reviewing the response and possibly preparing a reply, for an additional reasonable and necessary fee of \$1,350.00.
12. After considering the factors enumerated above as set forth in *Arthur Anderson* and the contemporaneous time records for this matter, it is my opinion that a total reasonable and necessary attorney's fees already incurred and likely to be incurred up to and through the hearing on the Motion for Compensation is \$14,805.00.

Further affiant sayeth not.”

  
Gwen E. Richard

SUBSCRIBED AND SWORN TO before me the undersigned authority, on May 15, 2024,  
by Gwen E. Richard.



  
NOTARY PUBLIC, STATE OF TEXAS

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS**

**ELIZABETH THOMAS,**  
*Plaintiff,*

v.

**MERITAGE HOMES OF TEXAS,**  
**Et Al.**  
*Defendants.*

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**ADVERSARY NO.: 24-03066**

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**STATEMENT OF FEES – PRIMARY RESIDENTIAL MORTGAGE, INC.**

<b>Date</b>	<b>Timekeeper</b>	<b>Rate</b>	<b>Bs Hrs</b>	<b>Amount</b>	<b>Narrative</b>
4/11/2024	G. Richard	\$450.00	0.2	\$90.00	Review and analyze Email Notification from the Court and Notice of Removal to Federal Court filed by Elizabeth Thomas and James Anderson (12 pages).
4/11/2024	G. Richard	\$450.00	0.4	\$180.00	Email from counsel for Aligned Party MTH Lending Group regarding the Notice of Removal to Federal Court filed by Elizabeth Thomas and James Anderson, questioning whether the removal properly purports to remove all cases, and seeking input as to whether to file a motion to remand. Consider and develop strategy regarding whether PRMI should participate in filing a Motion to Remand based on previous Federal Court Orders.
4/12/2024	G. Richard	\$450.00	0.4	\$180.00	Telephone conference with Rick Armstrong providing an update.
4/12/2024	G. Richard	\$450.00	0.3	\$135.00	Multiple email communications with counsel for the Aligned Parties regarding the most recent recusal and removal maneuvers by Elizabeth Thomas and strategy to address same.
4/12/2024	G. Richard	\$450.00	0.4	\$180.00	Review and analyze prior Court Orders from Federal Judge David Hittner related to prior removals, remands, and sanctions.
4/15/2024	G. Richard	\$450.00	0.4	\$180.00	Review and analyze prior Court Orders from Federal Judge George

					Hanks and Federal Judge Al Bennett related to prior removals, remands, and sanctions.
4/15/2024	G. Richard	\$450.00	0.3	\$135.00	Multiple email communications with counsel for the Aligned Parties regarding the most recent removal by Elizabeth Thomas and strategy to address same (following up on our prior communications last week and ongoing discussions of how to address).
4/16/2024	G. Richard	\$450.00	0.2	\$90.00	Multiple email communications with counsel for the Aligned Parties regarding coordinated planning and strategy meeting to address the latest removal to Federal Court.
4/18/2024	G. Richard	\$450.00	0.4	\$180.00	Review and analyze draft Motion to Remand received from counsel for MTH Lending Group in order to provide comments and/or revisions thereto as part of coordinated strategy. Evaluate whether additional documents should be attached to the Motion.
4/19/2024	G. Richard	\$450.00	0.2	\$90.00	Review and analyze redlines from Aligned Party Stewart Title to MTH Lending Group's draft Motion to Remand in order to provide comments and/or revisions thereto as part of coordinated strategy. Email to counsel for MTH Lending Group regarding same.
4/22/2024	G. Richard	\$450.00	0.1	\$45.00	Multiple email communications with counsel for MTH Lending Group regarding Motion for Remand.
4/23/2024	G. Richard	\$450.00	0.7	\$315.00	Review and analyze multiple email communications from counsel for MTH Lending Group regarding the adversary proceeding opened in connection with the matter most recently removed. Assess and evaluate documents provided: (1) Docket Sheet for adversary proceeding (2) Order for Conference 6.13.24 and (3) Motion to Remand filed in Bankruptcy Court (48 pages).
4/23/2024	G. Richard	\$450.00	0.2	\$90.00	Review and analyze Show Cause Order issued sua sponte by Bankruptcy Judge Isgur in connection with the most recent removal.

4/23/2024	G. Richard	\$450.00	0.1	\$45.00	Multiple email communications with counsel for the Aligned Parties regarding the Show Cause Order issued by Bankruptcy Judge Isgur.
4/23/2024	G. Richard	\$450.00	0.2	\$90.00	Draft, review, revise, finalize, and send detailed email to Rick Armstrong regarding the Show Cause Order issued today by Bankruptcy Judge Isgur.
4/23/2024	G. Richard	\$450.00	0.1	\$45.00	Email to counsel for PCF Properties in Texas, LLC regarding the Show Cause Order issued by Bankruptcy Judge Isgur.
4/24/2024	G. Richard	\$450.00	0.1	\$45.00	Email from Rick Armstrong regarding the upcoming hearing on May 1 and approval to attend same.
4/25/2024	G. Richard	\$450.00	0.2	\$90.00	Review and analyze Email Notification from the 333rd Harris County Court and the attached Notice of Removal (9 pages).
4/25/2024	G. Richard	\$450.00	0.2	\$90.00	Multiple email communications with counsel for the Aligned Parties regarding the Notice of Removal and upcoming hearing before Bankruptcy Judge Isgur.
4/26/2024	G. Richard	\$450.00	0.3	\$135.00	Multiple email communications with counsel for the Aligned Parties MTH Lending Group and Stewart Title regarding the latest Notice of Removal and potential impact on Motion for Summary Judgment filed by codefendant Stewart Title. Counsel for Stewart Title advised that they intended to proceed with the hearing on April 29th.
4/29/2024	G. Richard	\$450.00	0.7	\$315.00	Review and analyze Withdrawal of Notice of Removal filed by Elizabeth Thomas and James Anderson in Adversary Case No. 24-03066 pending before Bankruptcy Judge Isgur and in response to Judge Isgur's recent Show Cause Order. PRMI is not a party in that proceeding, but statements made in this Withdrawal may potentially be used against Ms. Thomas and Mr. Anderson in other cases in Harris County in which PRMI is a party. Evaluate and assess whether specific statements made in this Withdrawal can be utilized against

					Ms. Thomas and Mr. Anderson in such other cases in Harris County.
4/29/2024	G. Richard	\$450.00	0.3	\$135.00	Review and analyze Email Notification from the Court and the attached Notice of Filing of Remand Order by James Anderson (16 pages).
4/29/2024	G. Richard	\$450.00	0.3	\$135.00	Following analysis of Withdrawal of Notice of Removal, draft, revise, finalize, and send email to counsel for the Aligned Parties detailing the failure of Elizabeth Thomas and James Anderson to comply fully with the Order of Bankruptcy Judge Isgur and citing specific provisions therein.
4/30/2024	G. Richard	\$450.00	0.3	\$135.00	Telephone conference with counsel for MTH Lending Group regarding hearing tomorrow before Bankruptcy Judge Isgur in Adversary Proceeding Case No. 24-03066 and coordinated strategy related to same.
4/30/2024	G. Richard	\$450.00	0.7	\$315.00	Review and analyze P.C.F. Properties in TX, LLC's exhibits for the contempt hearing set for May 1, 2024, received from John Burger, counsel for Aligned Party PCF Properties in Texas, LLC, regarding Adversary Case No. 24-003066 pending before Bankruptcy Judge Isgur. These included 18 separate documents and 74 pages. Assess and evaluate for impact on the other Adversary Case No. 22-03024 pending before Bankruptcy Judge Isgur, in which PRMI is a party.
5/1/2024	G. Richard	\$450.00	2.1	\$945.00	Attend hearing before Bankruptcy Judge Isgur in Adversary Proceeding Case No. 24-03066. Following the hearing, participate in a conference with counsel for MTH Lending Group, Meritage Homes, and PCF Properties in Texas, LLC, to discuss next steps and strategic coordination.
5/8/2024	G. Richard	\$450.00	0.2	\$90.00	Telephone conference with counsel for Meritage Homes regarding the Motion for Compensation in order to

					comply with the procedure required by Judge Isgur.
5/13/2024	G. Richard	\$450.00	0.6	\$270.00	Prepare for and conduct telephone conference with Rick Armstrong (client) to discuss case and approval to file Motion for Compensation.
5/13/2024	G. Richard	\$450.00	2.9	\$1,305.00	Begin to prepare to draft Motion for Compensation through the review of extensive file materials related to wrongful removals, sanctions, and other Court Orders.
5/14/2024	G. Richard	\$450.00	0.6	\$270.00	Telephone conferences with counsel for Meritage Homes regarding the Motion for Compensation to be filed in Judge Isgur's court.
5/14/2024	G. Richard	\$450.00	5.9	\$2,655.00	Draft, review, and revise Motion for Compensation in connection with wrongful removals.
5/15/2024	G. Richard	\$450.00	0.8	\$360.00	Telephone conferences with counsel for Meritage Homes regarding finalization of the Motion for Compensation to be filed in Judge Isgur's court.
5/15/2024	G. Richard	\$450.00	5.1	\$2,295.00	Draft, review, revise, and finalize Motion for Compensation in connection with wrongful removals in order to file today as required by Judge Isgur.
5/15/2024	G. Richard	\$450.00	1.2	\$540.00	Draft, review, revise, and finalize Motion for Compensation in connection with wrongful removals in order to file today as required by Judge Isgur.
<b>TOTAL:</b>			<b>27.1</b>	<b>\$12,195.00</b>	

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ELIZABETH THOMAS**

*Plaintiff,*

**v.**

**PRIMARY RESIDENTIAL  
MORTGAGE INC, ET AL.**

*Defendants.*

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**ADVERSARY NO. 24-3066**

**AFFIDAVIT OF KIMBERLY G. ALTSULER**

STATE OF TEXAS           §

COUNTY OF HARRIS       §

Before me, the undersigned authority, on this day personally appeared Kimberly G. Altsuler who, after being by me first duly sworn, stated under oath as follows:

1. "My name is Kimberly G. Altsuler. I am over eighteen (18) years of age and I have never been convicted of a felony or crime of moral turpitude. I have personal knowledge of each statement contained in this affidavit and they are true and correct.
2. I am an attorney and have been licensed to practice and practicing law in the State of Texas since 1996. I am a Partner with the law firm Peckar & Abramson, P.C. (the "Law Firm"). I practice civil litigation in Texas, including Houston and Harris County. I am familiar with the type and amount of work involved in a case such as this one, and I am familiar with hourly billing rates typically charged in Harris County, Texas for cases such as this one.
3. The Law Firm represents Meritage Homes of Texas, LLC ("Meritage") in connection with all cases prosecuted by Elizabeth Thomas. I have been representing Meritage in the many Elizabeth Thomas lawsuits since Ms. Thomas, represented by James Andersen, first sued Meritage in 2014. Meritage pays the Law Firm by the hour for work performed on the case and pays all expenses. I have personally performed all the work for Meritage discussed in this Affidavit. Due to the lengthy and complex nature of this case, including the complicated procedural history, it would be more costly to bring an associate up to speed on this case to handle particular tasks at a lower billing rate than it would be for me to perform the task myself. As such, I have personal knowledge of all pleadings, motions, communications, and other documents involved in this lawsuit and the work performed by the Law Firm on this case.

4. I am familiar with the usual and customary rates charged by attorneys in Houston, Harris County, Texas for litigation of this kind and scope. I am familiar with the type and amount of work involved in a case such as this one.
5. In considering reasonable hourly rates, as set forth in *Arthur Anderson Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818–19 (Tex. 1997), citing, TEX. DISCIPLINARY R. PROF. CONDUCT 1.04, the factors that I considered include:
  - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
  - (2) whether the acceptance of the particular employment precluded other employment by the firm;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.
6. In my opinion, based on the above and based on my education, skill, knowledge, and experience as an attorney, a reasonable hourly rate for my time is \$450.00 per hour.
7. In connection with Ms. Thomas' and Mr. Anderson's violation of Court Orders precluding removal, resulting in the proceedings pending before Hon. Judge Isgur, my Law Firm spent time reviewing the filings, reviewing the record, strategizing regarding securing a remand, conferring with our client, conferring with the attorneys for the other affected Defendants, and attending a hearing on May 1, 2024. In performing this work, I worked a total of 9.4 hours for a total attorney's fee of \$4,230. In my opinion, all of this work was necessary, and the time spent was reasonable.
8. Attached to this Affidavit are relevant entries from the Law Firm's contemporaneous time records for work performed as generally described above. These records show the task performed, the amount of time spent on each task, and the total reasonable fee for the task. These records also tally the total reasonable and necessary attorney's fee for the removal and Meritage's motion in the amount of \$4,230.00.

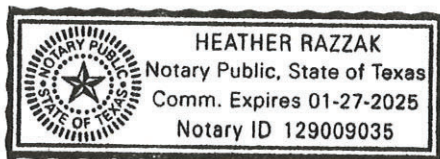
9. In addition, I estimate that the Law Firm will spend 2.8 hours attending the hearing on the Motion for Compensation for a total additional reasonable fee of \$1,260.00.
10. If Ms. Thomas or Mr. Andersen file a response to the Motion for Compensation, I anticipate the Law Firm will spend 3 hours reviewing the response and possibly preparing a reply, for an additional reasonable and necessary fee of \$1,350.00.
11. After considering the factors enumerated above as set forth in *Arthur Anderson* and the contemporaneous time records for this matter, it is my opinion that a total reasonable and necessary attorney's fees already incurred and likely to be incurred up to and through the hearing on the Motion for Compensation is \$6,840.00.

Further affiant sayeth not.”



Kim Altsuler

SWORN AND SUBSCRIBED before me the undersigned authority, on this 15<sup>th</sup> day of May 2024 by Kim Altsuler.

  
NOTARY PUBLIC, STATE OF TEXAS

Date	Timekeeper	Rate	Bs Hrs	Amount	Narrative
4/18/2024	K. Altsuler	\$450.00	0.5	\$225.00	Meeting with co-defendants to discuss status of case and need for remand into 333rd.
4/23/2024	K. Altsuler	\$450.00	0.2	\$90.00	Review show cause order and notice of hearing.
4/25/2024	K. Altsuler	\$450.00	0.2	\$90.00	Review filing by Stewart Title advising court that removal is improper because of 3 federal orders requiring Thomas to get permission from chief judge to remove a case.
4/29/2024	K. Altsuler	\$450.00	0.2	\$90.00	Review notice of filing remand order with attached remand order.
5/1/2024	K. Altsuler	\$450.00	2.8	\$1,260.00	Attend hearing on Show Cause Order in Federal Bankruptcy Court where removal was attempted.
5/7/2024	K. Altsuler	\$450.00	0.2	\$90.00	Phone call with PRMI's attorney regarding joint motion for attorney's fees.
5/14/2024	K. Altsuler	\$450.00	0.2	\$90.00	Prepare for call with client to discuss case.
5/14/2024	K. Altsuler	\$450.00	0.6	\$270.00	Phone calls with PRMI's attorney who is drafting joint motion for attorney's fees regarding motion and various orders to reference.
5/14/2024	K. Altsuler	\$450.00	0.4	\$180.00	Phone calls with client regarding status of case and recent activity and approval for filing motion for attorney's fees.
5/14/2024	K. Altsuler	\$450.00	0.3	\$135.00	Identify and locate sanctions and preclusion orders relevant to motion for attorney's fees.
5/15/2024	K. Altsuler	\$450.00	3.8	\$1,710.00	Review and revise motion for compensation and prepare Affidavit for attorney's fees.
<b>TOTAL:</b>			<b>9.4</b>	<b>\$4,230.00</b>	

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ELIZABETH THOMAS,  
Plaintiff**

**v.**

**MERITAGE HOMES OF TEXAS, ET AL.,  
Defendants**

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**ADVERSARY NO. 24-3066**

**ORDER OF CIVIL CONTEMPT**

Upon consideration of Primary Residential Mortgage, Inc.’s (“PRMI”) and Meritage Homes of Texas, LLC’s (“Meritage”) Joint Motion for Order of Civil Contempt (the “Motion”), and for the reasons stated on the record, Elizabeth Thomas and James M. Andersen are in civil contempt of court. It is hereby:

ORDERED that Elizabeth Thomas and James M. Andersen shall be imprisoned as authorized by law and/or pay a \$500.00 fine per diem until they prove compliance with the Court’s June 11, 2024, Order; and

FURTHER ORDERED that Elizabeth Thomas and James M. Andersen shall pay reasonable and necessary attorney’s fees incurred in connection with the Motion in the amount of \$\_\_\_\_\_ to PRMI and \$\_\_\_\_\_ to Meritage.

It is FURTHER ORDERED that all payments ordered herein shall be paid in full and in cash within 14 days of the date of this Order, and will accrue interest at the current judgment interest rate beginning 14 days after the date of this Order.

Signed on \_\_\_\_\_, 2024.

\_\_\_\_\_  
Hon. Marvin Isgur  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS

ELIZABETH THOMAS  
Plaintiff

Adversary No. 24-03066

V.

MERITAGE HOMES CORPORATION  
F/K/A MERITAGE CORPORATION,  
F/K/A LEGACY MONTEREY HOMES  
LP; MERITAGE HOMES OF TEXAS  
LLC F/K/A/ MERITAGE HOMES OF  
TEXAS LP F/K/A LEGACY  
MONTEREY HOMES LP; MTH  
LENDING GROUP L.P.; PRIMARY  
RESIDENTIAL MORTGAGE INC.;  
MARY A. LESTER; AND STEWART  
TITLE COMPANY CAUSE NO. 2016-  
87941

Defendants

CAUSE NO. 2017-76078

ELIZABETH THOMAS  
Plaintiff

v.

MERITAGE HOMES CORPORATION  
f/k/a Meritage Corporation, f/k/a Legacy  
Monterey Homes LP; MERITAGE  
HOMES OF TEXAS LLC f/k/a/  
Meritage Homes of Texas LP f/k/a  
Legacy Monterey Homes LP; MTH  
LENDING GROUP L.P.; PRIMARY  
RESIDENTIAL MORTGAGE INC.;  
MARY A. LESTER; and STEWART  
TITLE COMPANY;

Defendants

**CAUSE NO. 2017-82388**

<b>ELIZABETH THOMAS</b>	§
<b>Plaintiff</b>	§
<b>v.</b>	§
<b>MERITAGE HOMES OF TEXAS LLC</b>	§
<b>f/k/a/ Meritage Homes of Texas LP f/k/a</b>	§
<b>Legacy Monterey Homes and</b>	§
<b>STEWART TITLE GUARANTY</b>	§
<b>Defendants</b>	§
	§

**CAUSE NO. 2017-04089**

<b>MIRAMAR LAKE HOMEOWNERS</b>	§
<b>ASSOCIATION, INC.</b>	§
<b>Plaintiffs</b>	§
<b>v.</b>	§
	§
<b>ELIZABETH THOMAS</b>	§
<b>Defendants</b>	

**JOINT RESPONSE TO MERITAGE HOMES OF TEXAS LLC, AND  
PRIMARY RESIDENTIAL MORTGAGE IN MOTION FOR CONTEMPT**

Attorney James M. Andersen and Elizabeth Thomas pro, se files this Joint Response to Primary Residential Mortgage Inc., (“PRMI”) and Meritage Home of Texas LLC., (“Mertiage”), Joint Motion for Civil Contempt and for cause shows as follows:

**I. INTRODUCTION**

1. On June 11, 2024, the Court entered an Order Granting Compensation, ordering Thomas and Andersen to pay \$13,657.50 to PRMI and \$4,612.50 to Meritage in full and in cash within 14 days of the entry of the Order. (Dkt. 29).

2. Thomas states that she has not ignored the Court June 11, 2024, instead she lacks the ability to comply with the order (e.g., impecunious contemnors cannot pay a fine). Thomas is retired and the only source of income is her monthly social security payments. The Court is free to issue an order directing those payments be made to the PRMI and Meritage. *See: Exhibit A.*

3. Attorney Andersen had made a statement which illustrates his present inability to pay. *See: Exhibit B.*

4. Movants objects PRIM and Meritage allegations that their exist any order from a District Court Judges within the Southern District prohibiting Andersen from removing cases is simply not true. On February 8, 2024 the Honorable Judge Alfred H. Bennett U.S.D.J., issued an order in the case styled as Robert L. Thomas et al., vs. PCF Properties in Texas LLC, et al, Cause No. 22 CV-705 clarifying that the “Aligned Litigants” (Elizabeth Thomas, James Allen, Robert L. Thomas and Allan Haye), must receive advance written notice from the Chief Judge of the Southern District of Texas before filing any notices of removal to include any and all removals from Harris County District Court. The court went on the clarify the Notice of Removal to the Delaware Court/ Doc. #77 Ex. 10. The Notice of Removal to the Delaware Bankruptcy Court was filed by Andersen a third party defendant who is also a attorney and is representing himself in the matter. Notably in the Court Order, the Aligned Litigants were barred from filing any notices of removal without written permission from the Chief Judge of the Southern District of Texas. See Doc.#75. But Andersen was not included as a one of the Aligned Litigants *Id.* Thus, the Court’s order did not apply to him. *See: Exhibit C.*

### UNDISPUTED FACTS

5. On April 11, 2024, Attorney James M. Andersen on behalf of Elizabeth Thomas removed from the 333<sup>rd</sup> District Court, Harris County, Texas the following Cause No. 2016-87941 (the Parent Case) together with Case Cause Nos. 2017-76078, 2017-82388, and 2017-04089, all pending together with the parent case to the U.S. Bankruptcy Court for the Southern District of Texas.

6. On April 23, 2024 the issued a Show Cause Order for Contempt of Court and ordered Thomas and Andersen to appear and show cause why they should not be held in civil contempt and sanctioned.

7. On April 23, 2024, the Court ordered that Thomas and Andersen could purge themselves from Civil Contempt if they withdrew the Notice of Removal. On April 24, 2024, Thomas and Andersen withdrew the Notice of Removal.

8. On April 29, 2024, the Court remanded this proceeding Cause No. 2016-87941 (the Parent Case) and Case Cause Nos. 2017-76078, 2017-82388, and 2017-04089, were all together sent back to the 333<sup>rd</sup> District Court, Harris County, Texas for which they came. The Court retained jurisdiction over any compensatory civil sanctions or requests for compensation sought against Thomas and Andersen.

9. On May 1, 2024, the Court conducted a show cause hearing relating Thomas an Andersen's ongoing violations of the Removal Orders. At this hearing, **Attorney** Gwen E. Richard of the Ireland McDaniel Law Firm appeared on behalf of Primary Residential Mortgage Inc., a defendant in cause Nos. 2016-87941 and 2017-76078 pending together in the 333<sup>rd</sup> District Court, Harris County, Texas with the parent cause No. 2016-87941. Attorney Kim Altsuler of Pecker & Abramson PC appeared on behalf of Meritage Homes Corporation, and Meriage Homes LLC, defendants in cause Nos. 2016-87941, 2017-76078 and 2017-82388 pending together in the 333<sup>rd</sup> District Court, Harris County, Texas.

10. For the contempt motion to be granted, the court must find that the disobedient party not only failed to comply with a court order, but had the ability and financial resources and ability to pay but did, not. The judgment must also include a finding that either the defendant has the ability to comply with the court's order underlying the contempt and willfully

refuses to do so, or that the defendant had that ability but took action to divest himself of the ability to comply.

WHEREFORE, because Attorney James M. Andersen and Elizabeth Thomas shown that they lack the financial ability and resources to comply with the Court order the Parties motion should be denied and for such futher relief the court deems just,

Respectfully submitted,

THE JAMES M. ANDERSEN LAW FIRM

/s/James M. Andersen

James M. Andersen  
Attorney at Law  
Texas State Bar No. 01165850  
SBN: 20144  
P. O. Box 58554  
Webster, Texas 77598-8554  
Tel. (281)488-2800  
Fax. (281)480-4851  
E-Mail:jandersen.law@gmail.com

/s/ Elizabeth Thomas

Elizabeth Thomas Pro, Se  
712 H. Street NE #2487  
Washington DC 20002  
elizthomas234@gmail.com

**CERTIFICATE OF SERVICE**

I certify that on August 21, 2024, the foregoing document was served on Counsel of record via the Court's ECF electronic notification system.

/s/James M. Andersen

James M. Andersen

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS**

ELIZABETH THOMAS,  
*Plaintiff,*

ADVERSARY NO.: 24-03066

v.

MERITAGE HOMES OF TEXAS LLC, et al  
*Defendants.*

**ELIZABETH THOMAS STATEMENT OF INABILITY TO PAY**

Thomas states that she has not ignored the Court June 11, 2024, instead she lacks the ability to comply with the order (e.g., impecunious contemnor cannot pay a fine). Thomas is retired and the only source of income is her monthly social security payments of 1,150.00 and after I pay my monthly expenses I have nothing left. The Court is free to issue an order directing Social Security to make those payments to the PRMI and Meritage.

/s/ Elizabeth Thomas

Elizabeth Thomas

712 H. Street NE #2487

Washington DC 20002

elizthomas234@gmail.com

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS**

ELIZABETH THOMAS,  
*Plaintiff,*

ADVERSARY NO.: 24-03066

v.

MERITAGE HOMES OF TEXAS LLC, et al  
*Defendants.*

**JAMES M. ANDERSEN'S STATEMENT OF INABILITY TO  
PAY CIVIL CONTEMPT FINE**

The Court issued on June 11, 2024 an Order for Elizabeth Thomas and James M. Andersen to pay \$18,270.00 as compensatory sanctions for civil contempt as found by the Court. I have not been able to pay anything toward these sanctions. This has not been willful or intentional, I just do not have funds to make a payment. My primary source of income is my social security check each month which is \$2,300.00 which I use to pay my office rent of \$1430.00 per month and my car note of \$450.00 per month. I am also the sole caregiver for my brother who lost totally lost his memory in fall. I see him every day for three (3) to four (4) hours; bring him a breakfast each day and give him supplements and food to keep his health up. I do get client funds in but that is sporadic. Clients seem to run out of money after the case goes on for more than a few months. I live in La Marque in Galveston County and was without power for nine (9) days. I still have not been able to clean up the yard or finish cleaning out the refrigerator and freezer. I did get rid of the bad food in the refrigerator but I just let the food re-freeze in the freezer and I will get to it when I have time. Care for my brother is primary for me. I would pay the Court's sanctions if I had the funds. Right now I am at my wits end. My computer went down on Saturday morning at about 10 AM. I did not get it back until Monday at about 3 pm. A client had to pay the \$176.00 to get my computer up and running again. I am

willing to make a payment arrangement with the Court if that is what the Court desires I have had to pay rent late for June and July, 2024 (\$1,555.00) but I managed to pay my August rent on time this month.

Respectfully submitted

**JAMES M. ANDERSEN**  
**ATTORNEY AT LAW**

By:/s/James M. Andersen  
James M. Andersen  
Texas State Bar No.01165850  
P. O. Box 58554  
Webster, Texas 77598-8554  
Tel. (281)488-2800  
Fax. (281)480-4851  
[jandersen.law@gmail.com](mailto:jandersen.law@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that on August 21, 2024, the foregoing document was served on Counsel of record via the Court's ECF electronic notification system.

By:/s/James M. Andersen  
James M. Andersen

**ENTERED**

February 12, 2024

Nathan Ochsner, Clerk

Exhibit-C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISIONROBERT THOMAS, *et al*,

Plaintiffs,

VS.

PCF PROPERTIES IN TEXAS, LLC, *et al*,

Defendants.

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CIVIL ACTION NO. 4:22-CV-705

**ORDER**

Before the Court are Defendant PCF Properties in Texas, LLC's ("PCF") Motion for Sanctions (Doc. #77) and Third-Party Defendant James Andersen's ("Andersen") Response<sup>1</sup> (Doc. #78). In its Motion, PCF alleges that Plaintiffs Robert L. Thomas, Allan Haye, and James Allen, Defendant Elizabeth Thomas, and Andersen (collectively, the "Thomas Parties") and the parties' respective counsel should be sanctioned for willfully and intentionally violating the Court's February 16, 2023 Order (Doc. #75). Doc. #77. In the February 16 Order granting PCF and Third-Party Defendant JP Morgan Chase Bank N.A.'s Second Motion to Remand, the Court stated that the "Aligned Litigants" (Elizabeth Thomas, James Allen, Robert L. Thomas, and Allan Haye) must "receive advanced written notice from the Chief Judge of the Southern District of Texas before filing notices of removal to include any and all removals from any Harris County District Court." Doc. #75 at 4. The Court also warned that "continued frivolous notices of removal, complaints, and motions by the *Aligned Litigants* will result in the imposition of monetary sanctions and/or an order of contempt from this Court." *Id.* (emphasis added).

<sup>1</sup> The Court notes for the sake of clarity that Third-Party Defendant James Andersen's Response is titled as "Letter to Judge Bennett." Doc. #78. It is clear from the content of the letter that it was filed in response to the Motion for Sanctions, thus the Court will treat the letter as a response.

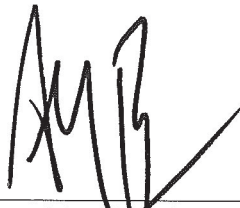
PCF contends that the Thomas Parties violated the Court's Order by attempting to remove a case in the 80th District Court of Harris County to the United States Bankruptcy Court of Delaware. Doc. #77, Ex. 10. The Notice of Removal to the Delaware Bankruptcy Court was filed by Andersen, a third-party defendant who is also an attorney and is representing himself in this matter. Notably, in the Court's Order, the Aligned Litigants were barred from filing any notices of removal without written permission from the Chief Judge of the Southern District of Texas. *See* Doc. #75 at 4. But Andersen was not included as one of the Aligned Litigants. *Id.* Thus, the Court's Order did not apply to him.

Accordingly, PCF's Motion for Sanctions (Doc. #77) is hereby DENIED.

It is so ORDERED.

**FEB 08 2024**

Date

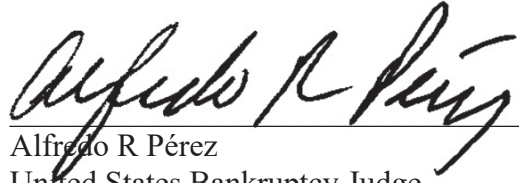


The Honorable Alfred H. Bennett  
United States District Judge



ORDERED that after review of the filings, the Court will determine whether to set another hearing on the Joint Motion for Contempt (ECF #32).

SIGNED 09/10/2024



Alfredo R Pérez  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ELIZABETH THOMAS,  
Plaintiff**

**v.**

**MERITAGE HOMES OF TEXAS, ET AL.,  
Defendants**

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**ADVERSARY NO. 24-3066**

**NOTICE OF HEARING ON PRIMARY RESIDENTIAL MORTGAGE, INC.  
AND MERITAGE HOMES OF TEXAS, LLC'S  
JOINT MOTION FOR ORDER OF CIVIL CONTEMPT**

PLEASE TAKE NOTICE that Primary Residential Mortgage, Inc. and Meritage Homes of Texas, LLC's Joint Motion for Order of Civil Contempt (Doc. 32, filed on July 3, 2024) is set for hearing on **Monday, October 21, 2024, at 9:00 a.m.** in Courtroom 400.

Respectfully submitted,

**IRELAN MCDANIEL**

A Professional Limited Liability Company

By: /s/ Gwen E. Richard

Gwen E. Richard

[grichard@imtexaslaw.com](mailto:grichard@imtexaslaw.com)

State Bar No 16842730

2520 Caroline St., 2<sup>nd</sup> Floor

Houston, Texas 77004

Phone: 713.222.7666

Fax: 713.222.7669

**ATTORNEY FOR PRIMARY  
RESIDENTIAL MORTGAGE, INC.**

**PECKAR & ABRAMSON, P.C.**

By: /s/ Kim Altsuler

Kim Altsuler

Federal Bar No. 21838

State Bar No. 00796656

[kaltsuler@pecklaw.com](mailto:kaltsuler@pecklaw.com)

1717 West Loop South, Suite 1400

Houston, TX 77027

Telephone: 713-568-1500

Facsimile: 713-568-1490

**ATTORNEY FOR MERITAGE HOMES  
OF TEXAS, LLC**

**CERTIFICATE OF SERVICE**

I certify that on October 2, 2024, a copy of the foregoing Notice of Hearing was served by filing it with the Court's Case Management/Electronic Case Filing system and as follows:

**Via Email [jandersen.law@gmail.com](mailto:jandersen.law@gmail.com)**

James M. Andersen

P.O. Box 58554

Webster, Texas 77598

**Via CM/RRR 9314 8699 0430 0126 9645 56**

**And Email [tethomas3@aol.com](mailto:tethomas3@aol.com)**

Elizabeth Thomas

712 H Street NE, Suite 1297

Washington DC 20002

**Via Email [holidyefile@germer.com](mailto:holidyefile@germer.com)**

Dale M. Holiday

Germer PLLC

America Tower

2929 Allen Parkway, Suite 2900

Houston, Texas 77019

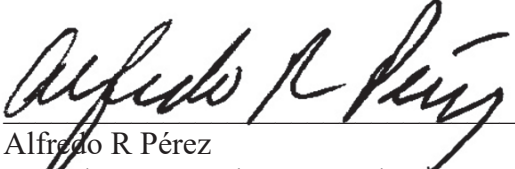
/s/ Gwen E. Richard

Gwen E. Richard



IT IS ORDERED that James M. Andersen show cause, at the hearing previously scheduled for October 21, 2024, at 9 am at Houston, Courtroom 400, why he should not be held in contempt for failing to comply with the Court's order dated September 10, 2024 (ECF #46).

SIGNED 10/03/2024

  
Alfredo R Pérez  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**OUT OF DISTRICT MAIN CASE**  
*Debtor*

**CASE NO. 99-99999**

**CHAPTER 7**

**ELIZABETH THOMAS**

*Plaintiff*

**vs.**

**ADVERSARY NO.24-3066**

**PRIMARY RESIDENTAL MORTGAGE  
INC, et al.,**

*Defendants.*

**MOTION FOR A CONTINUANCE**

Comes Now, Elizabeth Thomas (the “Plaintiffs”) and files this Emergency Motion to Continue at least three (days) prior to the October 21, 2024, hearing and for good cause shows the court as follows:

On October 9, 2024, I was diagnosed by my doctor with a condition that requires surgery. I am scheduled for said surgery on October 17, 2024 with a pending release date of October 31, 2024, providing that there are no complications.

As such I am will not be able to appear at the hearing scheduled for October 21, 2024, and seek that said hearing be continued for the reasons stated above. In support thereof I have filed under seal a copy of the doctor’s letter placing me on

a Medical from the October 17, 2024 to October 31, 2024.

Respectfully submitted,

/s/Elizabeth Thomas

Elizabeth Thomas Pro, Se  
712 H Street NE #2487  
Washington DC 20002  
elizthomas234@gmail.com

## CERTIFICATE OF CONFERENCE

I Elizabeth Thomas declare that on October 15, 2024, I served a copy of this Motion via e-mail upon Attorney Gwen E. Richard who oppose counsel for Primary Residential Mortgage Inc., at [g-richard@intexaslaw.com](mailto:g-richard@intexaslaw.com) and Attorney Kim Altsuler counsel for Meritage Homes of Texas LLC. at [kaltsuler@pecklaw.com](mailto:kaltsuler@pecklaw.com) no response and Attorney James M. Andersen does not oppose at [jandersen.law@gmail.com](mailto:jandersen.law@gmail.com) and requested if they oppose this motion,

/s/Elizabeth Thomas

### **CERTIFICATE OF SERVICE**

The undersigned certifies that on October 15, 22, 2024 a copy of the foregoing document was served EFC- Service System or E-mail and U. S. Mail, postage prepaid upon all counsel of record.

/s/Elizabeth Thomas

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**OUT OF DISTRICT MAIN CASE**  
*Debtor*

**CASE NO. 99-99999**

**CHAPTER 7**

**ELIZABETH THOMAS**

*Plaintiff*

**vs.**

**ADVERSARY NO.24-3066**

**PRIMARY RESIDENTAL MORTGAGE  
INC, *et al.*,**

*Defendants.*

**ORDER GRANTING MOTION FOR CONTINUANCE**

Before the Court is the Motion filed by Elizabeth Thomas (the “Movant”) requesting continuance of the current hearing scheduled for October 21, 2024, on the Defendants Motion for Contempt. The Court finds that good cause has been shown and the Motion should be granted.

ACCORDINGLY, IT IS ORDERED that the hearing on the Defendants Motion for Contempt as to the Movant is continued to the \_\_\_\_\_date and time \_\_\_\_\_.

SIGNED On \_\_\_\_\_.

\_\_\_\_\_  
Hon. Alfredo R. Perez  
United States Bankruptcy Judge

**ENTERED**

October 16, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**OUT OF DISTRICT MAIN CASE**  
*Debtor*

**CASE NO. 99-99999****CHAPTER 7****ELIZABETH THOMAS***Plaintiff***vs.****ADVERSARY NO.24-3066**

**PRIMARY RESIDENTIAL MORTGAGE  
INC, et al.,**

*Defendants.*

**ORDER GRANTING MOTION FOR CONTINUANCE**

Before the Court is the Motion filed by Elizabeth Thomas (the “Movant”) requesting continuance of the current hearing scheduled for October 21, 2024, on the Defendants Motion for Contempt. The Court finds that good cause has been shown and the Motion should be granted.

ACCORDINGLY, IT IS ORDERED that the hearing on the Defendants Motion for Contempt as to the Movant is continued to November 5, 2022 at 9 am (Central Time).

Signed: October 16, 2024

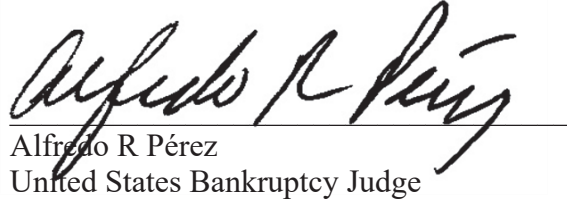
  
Alfredo R Pérez  
United States Bankruptcy Judge



IT IS THEREFORE,

ORDERED that James M. Andersen appear, in person, at the hearing on November 5, 2024, at 9:00AM at the Federal Courthouse in Houston, 515 Rusk Avenue, Courtroom 400, Houston, Texas to show cause why he should not be held in contempt of court.

SIGNED 10/21/2024



Alfredo R Pérez  
United States Bankruptcy Judge



